REVOCATION OF POLICE OFFICER CERTIFICATION: A VIABLE REMEDY FOR POLICE MISCONDUCT?*

ROGER L. GOLDMAN**
STEVEN PURO***

I. INTRODUCTION

A. Revocation of Police Officers' Certificates

According to Professor Jerold H. Israel, "if you want to do something about the police, the answer is not the Supreme Court . . . the answer is administrative regulations [or legislative remedies]."[1] Citing Chief Justice Warren's opinion in *Terry v. Ohio,*[2] Professor Israel noted that the Court "can't cure all the problems" and suggested that the best, albeit limited, example of non-judicial remedies is Congress's 1994 grant of authority to the U.S. Department of Justice to bring pattern and practice suits against local police departments.[3]

* The research for this Article was supported in part by a grant from the Beaumont Faculty Development Fund, Saint Louis University. The authors thank Stephen R. Felson, Margaret McDermott, Dan Hasenstab and Mandi Serrone for their assistance in the preparation of this article.

** Professor of Law, Saint Louis University School of Law.

*** Professor of Political Science, Saint Louis University.

1. Jerold H. Israel, Remarks after the Richard J. Childress Memorial Lecture (Sept. 29, 2000) (audiotape on file with the Saint Louis University Law Journal).

2. 392 U.S. 1 (1968). After noting that the exclusionary rule has its limitations (for example, the rule does not apply when officers are not seeking evidence for trial), the Court in *Terry* commented that it did not intend to "discourage the employment of other remedies than the exclusionary rule to curtail abuses for which that sanction may prove inappropriate." *Id.* at 15. A few years earlier in *Mapp v. Ohio*, 367 U.S. 643 (1961), the Court did suggest that remedies for police misconduct other than the exclusionary rule were ineffective. "The experience of California that such other remedies have been worthless and futile is buttressed by the experience of other States. The obvious futility of relegating the Fourth Amendment of the protection of other remedies has, moreover, been recognized by the Court since Wolf." *Id.* at 652.

3. 28 U.S.C. §14141 (1994). For a description of the operation of the law and the two civil suits brought against police departments in Steubenville, Ohio and Pittsburgh, Pennsylvania, see Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFF. CRIM. L. REV. 815 (1999).

Electronic copy available at: http://ssrn.com/abstract=1425622

The most common state legislative and administrative approach for addressing police misconduct, which is largely unknown to scholars and the public even though it has been adopted by forty-three states, involves revocation of the officer's state certificate or license[4] that is issued upon successful completion of state-mandated training. As opposed to termination of employment by a local department, which does not prevent the officer from being rehired by a different department, revocation of the certificate prevents the officer from continuing to serve in law enforcement in the state.[5] A state agency, typically called a Peace Officer Standards and Training Commission (POST),[6] has the authority to hold hearings and impose sanctions against

4. Minnesota, North Dakota and Texas issue licenses rather than certificates upon successful completion of an examination. As discussed below, there is disagreement among some states that issue certificates as to whether the certificate is a license, or merely an indication of successful completion of a course of study. *See* discussion regarding the California Commission, in text accompanying *infra* notes 143-151.

5. As will be discussed *infra*, the grounds for termination from a police department are usually much broader than what constitutes a revocable offense, but a few states provide that termination is grounds for revocation. For example, South Dakota provides that a certificate may be revoked or suspended if the officer has been "discharged from employment for cause." S.D. CODIFIED LAWS § 23-3-35(3) (Michie 1998).

6. Almost all POSTs have official websites; the information provided varies among the states. A few include descriptions of officers whose certificates have been revoked. Ala. Peace Officer Standards & Training Comm'n, *available at* http://www.dps.state.al.us/poststst.html (last visited Jan. 21, 2001); Div. of Alaska State Troopers, *available at* http://www.dps.state.ak.us/ast (last visited Jan. 21, 2001); Ariz. Peace Officer Standards & Training Bd., *available at* http://www.azpost.state.az.us (last visited Jan. 21, 2001); Ark. Comm'n on Law Enforcement Standards & Training, *available at* http://www.law-enforcement.org/clest/ (last visited Jan. 21, 2001); Cal. Peace Officer Standards & Training, *available at* http://www.post.ca.gov/newindex.htm#top (last visited Jan. 21, 2001); Colo. Peace Officer Standards & Training, *available at* http://www.ago.state.co.us/POST/Psthome.htm (last visited Feb. 18, 2001); Conn. Police Officer Standards & Training Council, *available at* http://www.post.state.ct.us (last visited Jan. 21, 2001); Del. State Police, *available at* http://www.state.de.us/dsp/recruiting/recruit.htm (last visited Jan. 21, 2001); Fla. Criminal Justice Standards & Training Comm'n, *available at* http://www.fdle.state.fl.us/cjst (last visited Jan. 21, 2001); Ga. Peace Officer Standards & Training Council, *available at* http://www.gapost.org (last visited Jan. 21, 2001); Haw. Pub. Safety Dep't, *available at* http://www.hawaii.gov/psd/tsd (last visited Jan. 21, 2001); Idaho Peace Officer Standards and Training, *available at* http://www.idaho-post.org (last visited Jan. 21, 2001); Ill. Law Enforcement Training & Standards Bd., *available at* http://www.cait.org/ iletsb (last visited Jan. 21, 2001); Ind. Law Enforcement Acad., *available at* http://www.state.in.us/ilea (last visited Jan. 21, 2001); Iowa Law Enforcement Acad., *available at* http://www.state.ia.us/government/ilea (last visited Jan. 21, 2001); Kan. Law Enforcement Training Ctr., *available at* http://www.kletc.org (last visited Jan. 21, 2001); Ky. Peace Officer Prof'l Standards, *available at* http://docjt.jus.state.ky.us/ (last visited Jan. 21, 2001); La. Peace Officer Standards & Training Council, *available at* http://www.cole.state.la.us (last visited Jan. 21, 2001); Me. Criminal Justice Acad., *available at* http://janus.state.me.us/dps/mcja (last visited Jan. 21, 2001); Md. Police & Corr. Training Comm'n, *available at* http://www.dpscs.state.md.us/pct (last visited Jan. 21, 2001); Mich. Comm'n on Law Enforcement Standards, *available*

Electronic copy available at: http://ssrn.com/abstract=1425622

police officers[7] that have engaged in serious misconduct as defined in the statute or regulation. Known as revocation,[8] decertification[9] or cancellation,[10]

at http://www.mcoles.org (last visited Jan. 21, 2001); Minn. Peace Officer Standards & Training, *available at* http://www.dps.state.mn.us/post (last visited Jan. 21, 2001); Mass. Criminal Justice Training Council, *available at* http://www.state.ma.us/cjtc (last visited Jan. 21, 2001); Miss. Law Enforcement Officers' Training Acad., *available at* http://www.dps.state.ms.us/mleota/mleota.html (last visited Jan. 21, 2001); Mo. Peace Officer Standards & Training Council, *available at* http://www.dps.state.mo.us/post/posthead.htm (last visited Jan. 21, 2001); Mont. Peace Officer Standards & Training Council, *available at* http://www.iadlest.org/montana (last visited Jan. 22, 2001); Neb. Crime Comm'n, *available at* http://www.nol.org/home/crimecom (last visited on Jan. 22, 2001); Nev. Comm'n on Peace Officer Standards & Training, *available at* http://www.post.state.nv.us (last visited January 22, 2001); N.H. Police Standards & Training Council, *available at* http://ourworld.compuserve.com/homepages/klohmann/homepage.htm (last visited Feb. 18, 2001); N.J. Div. of Criminal Justice, *available at* http://www.state.nj.us/lps/dcj/lawes.htm (last visited Feb. 18, 2001); N.M. Dep't of Pub. Safety & Recruiting Div., *available at* http://www.dps.nm.org/training (last visited Feb. 18, 2001); N.Y. Div. of Criminal Justice Serv., *available at* http://criminaljustice.state.ny.us/ops/ (last visited Jan. 22, 2001); N.C. Office of the Att'y Gen. Training & Standards Div., *available at* http://www.jus.state.nc.us/otsmain/otsmain.htm (last visited Nov. 6, 2000); N.D. Officer Standards & Training Bd., *available at* http://209.218.117.34/ndakota (last visited Jan. 22, 2001); Ohio Peace Officer Training Acad., *available at* http://www.ag.state.oh.us (last visited Jan. 22, 2001); Okla. Council on Law Enforcement Educ. & Training, *available at* www.cleet.state.ok.us (last visited Jan. 22, 2001); Or. Dep't of Pub. Safety Standards & Training, *available at* http://www.orednet.org/~bpsst (last visited Jan. 22, 2001); Pa. Mun. Police Officers' Edu. & Training, *available at* http://www.mpoetc.org (last visited Jan. 22, 2001); R.I. Law Enforcement Trainers Ass'n, *available at* http://newportri.net/rileta (last visited Jan. 22, 2001); S.C. Dep't. of Public Safety Criminal Justice Acad. Div., *available at* http://www.iadlest.org/scarolina (last visited Jan. 22, 2001); S.D. Law Enforcement Standards & Training Comm'n, *available at* http://www.state.sd.us/attorney/aboutoffice/agdiv/DCI/let/les&tcommission.shtml (last visited Feb. 18, 2001); Tenn. Law Enforcement Training Acad., *available at* http://www.state.tn.us/safety/tleta.htm (last visited Feb. 18, 2001); Tex. Comm'n on Law Enforcement Officer Standards & Educ., *available at* http://www.tcleose.state.tx.us/tcleosehome/indexhome.htm (last visited Feb. 18, 2001); Utah Peace Officer Standards & Training, *available at* http://www.post.state.ut.us (lasted visited on Jan. 22, 2001); Vt. Criminal Justice Training Council, *available at* http://www.vcjtc.state.vt.us (last visited Jan. 22, 2001); Va. Dep't of Criminal Justice Serv., *available at* http://www.dcjs.state.va.us (last visited Jan. 22, 2001); Wash. State Criminal Justice Training Comm'n, *available at* http://www.wa.gov/cjt (last visited Jan. 22, 2001); W. Va. Criminal Justice Serv. Law Enforcement Training, *available at* http://www.wvdcjs.com (last visited Nov. 6, 2000); Wis. Dep't of Justice: Law Enforcement Serv. Div., *available* at http://danenet.wicip.org/wisms/orgs/lesdwdoj.htm (last visited Feb. 18, 2001); Wyo. Law Enforcement Acad., *available at* http://wleacademy.com (last visited Jan. 22, 2001).

7. For ease of reference, this paper will use "police officer" rather than "peace officer" to refer to both police and deputy sheriffs. Many state POSTs revoke the certificates of correctional officers and in such cases, the state agency's name indicates this broader authority. For example, Florida's revocation agency is the Criminal Justice Standards and Training Commission.

8. This is the term used by the vast majority of states.

9. This is the term used in Idaho, Illinois, Iowa, Maine, Nevada, Vermont, Virginia and Wisconsin.

Electronic copy available at: http://ssrn.com/abstract=1425622

this practice has the advantage of insuring that officers cannot continue to practice their profession in the state by suspending or removing state certification. It treats the police profession like any other—if minimum standards of performance are not met, the person loses the privilege of continuing in the profession.[11] Although the focus of this article is on misconduct in the course of the officer's official duties, grounds for revocation encompass a wide range of activities, including off-duty misconduct. As is true for other professions, a sanction short of revocation is often provided. Florida, for example, provides for revocation, suspension or placement on probationary status for up to two years, retraining and issuance of a reprimand.[12] Except in the case of so-called constitutional officers who hold elective offices, such as sheriffs or constables, revocation applies to everyone—from patrolman to chief. And as discussed below, many state POSTs have jurisdiction over these elected officials.[13]

B. Examples of Revocation

Police conduct that has led to successful damage suits by victims for violations of due process under 42 U.S.C. § 1983 has also been grounds for revocation of the officer's certificate. For example, in *Rogers v. City of Little Rock*,[14] an officer stopped the plaintiff's car, offered to follow her home to get her insurance papers, and coerced her into having sex.[15] The U.S. Court of Appeals for the Eighth Circuit upheld a $100,000 judgment against the officer, as well as the district court's finding that his conduct "shocked the conscience" in violation of substantive due process.[16]

Similarly, a nine-year member of the St. Louis, Missouri Police Department stopped a woman for a routine traffic violation and discovered she was wanted by authorities in connection with a child custody case. The officer also found marijuana in the car, and he told the woman he could help her avoid criminal charges if she agreed to have sex with him in his personal car. She

10. This is the term used in Arizona, California, Connecticut and Mississippi. In addition, POSTs may annul certificates in Georgia and recall them in Maryland and Mississippi.

11. The authors of this article have been writing about revocation since the 1980s. *See* Roger Goldman & Steven Puro, *Decertification of Police: An Alternative to Traditional Remedies for Police Misconduct*, 15 HASTINGS CONST. L.Q. 45 (1987) [hereinafter Goldman & Puro, *An Alternative to Traditional Remedies*]; Steven Puro & Roger Goldman, *Police Decertification: A Remedy for Police Misconduct?,* 5 POLICE & LAW ENFORCEMENT (1987) [hereinafter Puro & Goldman, *A Remedy for Police Misconduct*]; Steven Puro, Roger Goldman & William C. Smith, *Police Decertification: Changing Patterns Among the States, 1985-1995*, 20 POLICING 481 (1997) [hereinafter Puro et al., *Changing Patterns Among the States*].

12. FLA. STAT. ANN. § 943.1395(7)(e) (1996 & Supp. 2000).

13. See discussion *infra* in text accompanying notes 110-115.

14. 152 F.3d 790 (8th Cir. 1998).

15. *Id.* at 793.

16. *Id.* at 795.

did so, but subsequently reported the incident. This officer was fired by the Department[17] and his certificate was revoked by the Missouri POST in 1999.[18]

Officers have also been decertified for intentional violations of suspects' constitutional rights. For example, an Arizona deputy arrested a suspect on a charge of interfering with a judicial proceeding.[19] When the deputy read the suspect the Miranda rights and the arrestee invoked his right to counsel, the deputy turned off the tape recorder and an hour later had a full confession that was ultimately suppressed. At the suspect's criminal trial, upon direct testimony, the deputy testified that he had arrived at the suspect's residence at 10:15 a.m., interviewed him for approximately one hour, and the suspect had made incriminating statements that established his guilt. All of this testimony was false. A felony complaint was issued against the deputy charging him with two counts of perjury, a class four felony. He later accepted a plea agreement, which found him guilty of the class one misdemeanor of committing false swearing by making a sworn statement that he believed to be false. He was subsequently decertified.[20]

C. The Need for Revocation

Many of the states with the power to impose sanctions are doing so with increasing frequency. For example, forty officers had their certificates revoked in 1999 compared to one in 1993, two in 1994, and six in 1995.[21] The reasons included sex with arrestees or inmates, theft, third-degree assault and positive drug tests.[22] In Texas, there were twenty-five suspensions and thirty-three revocations in 1997, compared to 267 suspensions and 146 revocations in 1999.[23]

Traditional remedies for police misconduct fail to address the problem caused by the practice of leaving the decision to hire and fire officers up to local sheriffs and chiefs. This often leads to situations where unfit officers are able to continue to work for a department that is unable or unwilling to terminate them. Even when they are terminated, these officers often go to work for other departments within the state. Although virtually every other profession is regulated by a state board with the power to remove or suspend

17. Bill Bryan, *City Police Officer Quits After Woman Says He Coerced Her into Sex*, ST. LOUIS POST-DISPATCH, May 27, 1996, at 7A.

18. MO. DEP'T OF PUBLIC SAFETY, 5 DPS NEWS 5 (2000) [hereinafter DPS NEWS].

19. ARIZONA INTEGRITY BULLETIN, *available at* http://www.azpost.state.az.us/integrity%20bulletin/jan2000.htm.

20. *Id*.

21. *See* DPS NEWS, *supra* note 18, at 2.

22. *See* DPS NEWS, *supra* note 18, at 4-5.

23. E-mail from Craig H. Campbell, Ph.D., Deputy Chief, Prof'l Programs and Curriculum, Texas Comm'n on Law Enforcement Officer Standards and Education (TCLEOSE), to Steven Puro, Professor, Saint Louis University (Sept. 27, 2000) (on file with authors).

the licenses or certificates of unfit members of the profession (*e.g.*, attorneys, physicians, teachers), there has been a longstanding tradition of local control of police without state involvement.

A few examples from reported federal cases illustrate the problem of terminated officers continuing to work within the criminal justice system. Donald White was a police officer in the Village of Darien, Wisconsin.[24] He was terminated for several instances of offering to drop or void traffic citations against male drivers in exchange for sexual favors.[25] He later applied for and obtained a position with a department in the nearby town of Bloomfield, Wisconsin where he committed two similar acts.[26] Bloomfield officials were unaware of White's prior misconduct because Darien officials concealed White's personnel file from Bloomfield officials as well as from the state agency investigating White.[27] Two of White's victims while he was employed at Darien were awarded $785,000 by a federal court jury because the police chief knew or should have known of similar prior conduct but failed properly to supervise or investigate White.[28] Similarly, Elijah Wright, an officer employed by the Helena, Arkansas Police Department, offered to fix traffic tickets for three women in exchange for sex.[29] After resigning, he applied to work as a deputy with the Pulaski County, Arkansas Sheriff's Department. During the background check conducted by Pulaski County, three officers sent letters of recommendation from Helena, and no mention was made of the traffic-fixing incident. Wright was hired by Pulaski County, and he subsequently forced women detainees to undress and engage in various sex acts in his presence while he was on duty.[30]

Without a mechanism at the state or national level to remove the certificate of law enforcement officials who engage in such misconduct, it is likely that there will be more such instances of repeated misconduct.[31] Traditional

24. Carney v. White, 843 F. Supp. 462 (E.D. Wis. 1994), *aff'd*, 60 F.3d 1273 (7th Cir. 1995).

25. *Id*. at 478.

26. *Id*.

27. Relying on plaintiffs' opposition brief, the district court's opinion stated that "Bloomfield officials were totally unaware of White's prior misconduct because the Village of Darien officials closed and concealed White's personnel file and instructed Chief Michalek not to respond to an inquiry from the Wisconsin Department of Justice's Law Enforcement Standards Bureau." *Id.* at n.5. According to Dennis Hanson, Bloomfield officials were told by a field investigator that the Department should check into Officer White's background. Telephone Interview with Dennis Hanson, Director of Wisconsin Training and Standards Bureau (Jan. 26, 2001) (notes on file with authors).

28. *Men Awarded $785,000 After Cop Forced Sex During Traffic Stop*, CHI. DAILY LAW BULL., July 25, 1994, at 3.

29. Doe v. Wright, 82 F.3d 265, 267 (8th Cir. 1996).

30. *Id.*

31. For a discussion of the traditional methods of controlling police conduct, see Goldman & Puro, *An Alternative to Traditional Remedies*, *supra* note 11, at 51.

remedies do not address the problem. For example, the exclusionary rule prevents prosecutors from using probative evidence seized from a defendant in violation of his Fourth Amendment rights, but it does nothing to punish the officer.[32] Likewise, criminal prosecution of officers is rare, and convincing jurors to convict is extremely difficult.[33] Administrative complaints against the police in front of civilian review boards have been equally ineffective because the department for which the officer works rather than an independent body usually conducts the investigation.[34] Finally, civil damage suits against police officers face the problem of juries, who tend to rule in favor of the police; even if the suit is successful, the officer is often judgment-proof.[35]

Recognizing the need for a law that removes unfit officers from the profession, particularly those engaging in repeated misconduct, most states have adopted revocation laws;[36] four states have enacted such legislation since 1996.[37] The professional organization of POST Directors, the International Association of Directors of Law Enforcement Standards & Training ("IADLEST"), in its Model Minimum State Standards, recommends that POSTs be given the authority to both deny and revoke state certification for

32. For a discussion of the effect of the exclusionary rule, see *id.* at 52.

33. For a discussion of criminal prosecution of police officers, see *id.* at 59.

34. For a discussion of discipline by such local review boards, see *id. at* 60-64.

35. For a discussion of civil suits, see *id.* at 65.

36. ALA. CODE § 36-21-45 (1997 & Supp. 2000); ALASKA STAT. § 18.65.240 (Lexis 2000); ARIZ. REV. STAT. ANN. § 41-1822 (West 2000); ARK. CODE ANN. §§ 12-9-602, 12-9-603 (Lexis 1999); CAL. GOV'T CODE § 1029 (West 1995 & Supp. 2001); CAL. PENAL CODE § 13510.1 (West 2000); COLO. REV. STAT. § 24-31-305 (2000); CONN. GEN. STAT. ANN. § 7-294d (West 1999); DEL. CODE ANN. tit. 11, § 8404 (1995); FLA. STAT. ANN. § 943.1395 (West 1996); GA. CODE ANN. § 35-8-7.1 (2000); IDAHO CODE § 19-5190 (Michie Supp. 2000); 50 ILL. COMP. STAT. ANN. § 705/6.1 (Supp. 2000); IOWA CODE ANN. § 80B.11 (West 1996 & Supp. 2000); KAN. STAT. ANN. § 74-5616 (1992 & Supp. 1999); KY. REV. STAT. ANN. §§ 15.392(2)(3), 15.404 (Lexis Supp. 2000); ME. REV. STAT. ANN. tit. 25, § 2806 (West 1988 & Supp. 2000); MD. CODE ANN. art. 41, § 4-201 (1999); MICH. STAT. ANN. § 4.450 (9b) (Lexis Supp. 2000); MINN. STAT. ANN. § 626.8431 (West Supp. 2001); MISS. CODE ANN. § 45-6-7 (2000); MO. ANN. STAT. § 590.1135 (West 1995 & Supp. 2001); MONT. CODE ANN. § 44-4-301 (1999); NEB. REV. STAT. § 81-1403 (6) (2000); NEV. REV. STAT. ANN. §§ 289.510, 289.580 (Lexis 2000); N.H. REV. STAT. ANN. § 188-F:26 (1999); N.M. STAT. ANN. § 29-7-4 (Michie 1997); N.C. GEN. STAT. § 17C-10 (Lexis 1999); N.D. CENT. CODE § 12-63-12 (Michie 1997 & Lexis Supp. 1999); OHIO REV. CODE ANN. §109.77 (West Supp. 2000); OKLA. STAT. ANN. tit. 70, § 3311 (West 1998 & Supp. 2000); OR. REV. STAT. § 181.662 (1999); 53 PA. CONS. STAT. ANN. § 2164 (West 1997); S.C. CODE ANN. § 23-6-450 (West. Supp. 1999); S.D. CODIFIED LAWS § 23-3-35 (Michie 1998); TENN. CODE ANN. § 38-8-104 (1997); TEX. OCC. CODE ANN. §§ 1701.351, 1701.502, 1701.503 (2001); UTAH CODE ANN. § 53-6-211 (Lexis Supp. 2000); VT. STAT. ANN. tit. 20, § 2355 (2000 Supp.); VA. CODE ANN. §§ 9-170, 15.2-1706, 15.2-1707 (Michie Supp. 2000); W. VA. CODE ANN. §§ 30-29-6, 30-29-3 (Michie 1998); WIS. STAT. §165.85 (West 1997 & Supp. 2000); WYO. STAT. ANN. § 9-1-704 (Lexis 1999).

37. These states are Illinois (1999), Kentucky (1998), Michigan (1998) and Ohio (1996).

law enforcement and corrections officers.[38] The seven states without revocation authority are Hawaii, Indiana, Massachusetts, New Jersey, New York, Rhode Island and Washington.[39]

Although it might seem unusual for a police department to hire an officer with a past record of misconduct, the second department is usually located in a poor community that cannot afford to pay high salaries to its police. These low-income departments are more willing to overlook the previous misconduct because the officer is in possession of the state-mandated certificate that demonstrates he has successfully completed the necessary hours of training to be an officer.[40] Departments need not pay for the costs of a training academy or the salary of the trainee while he is in training.[41] In other cases, the second department may be unaware of the previous misconduct, either because the first department would not disclose the officer's previous misconduct, or because the second department does not conduct a thorough background check.

Officers under suspicion of misconduct may willingly leave their current department with an understanding that they will receive a positive job recommendation or at least no negative recommendations. Chiefs and city officials fear defamation suits if they give an honest assessment of the officer's past performance to the new department.[42] The chief's and city's main interest is removing the officers from their departments. As the mayor of a community commented after the quick departure—by termination or resignation—of four police officers after allegations of improper sexual relationships with two teen-age girls, "The important issue here is that the police officers accused of doing

38. INT'L ASS'N OF DIR. OF LAW ENFORCEMENT STANDARDS & TRAINING, MODEL MINIMUM STATE STANDARDS, STANDARDS OF PROF'L CONDUCT § 6.0, *available at* http://www.iadlest.org/modelmin.htm (revised June 24, 1998) [hereinafter MODEL MINIMUM STATE STANDARDS].

39. With the exception of Hawaii, all states have POSTs. During the last several years, bills that would provide for revocation have been submitted in the Washington legislature but have not been enacted.

40. Then head of Internal Affairs for the St. Louis Police Department, Captain Clarence Harmon, stated, in support of decertification legislation in Missouri, that "as many as ninety percent of the officers who leave that department under a cloud go to municipal police departments in St. Louis County and apply for jobs. Except for the most notorious cases, they were able to get that employment." Kathryn Rogers, *New Law Will Empower State to Decertify Unfit Officers*, ST. LOUIS POST-DISPATCH, June 29, 1988.

41. As described by Gary Maddox, Assistant Director of the Missouri Department of Public Safety, "The officer is fired from Department A and goes to Department B and says, 'I'm certified'. . . You have a police chief at Department B who can spend the money to have someone trained or else hire this officer who already is trained. The choice is obvious." *Id.*

42. The executive director of Missouri's POST recently noted that "cities often allow problem officers to resign to avoid lengthy appeals and potential lawsuits." Elizabeth Vega, *When Officers Quit Under Suspicion, State Wants to Know Details*, ST. LOUIS POST-DISPATCH, Jan. 14, 2001, at C1.

these things are not with the Webster Groves Police Department."[43] When it was pointed out that other departments might hire them, the mayor responded, "Those communities make their own choices."[44] Without a state agency with the authority to collect information on past performance and prevent the officer from continuing in law enforcement by a procedure such as revocation, the movement of unfit officers among departments seems to be inevitable. In some cases, departments let problem officers resign with an agreement not to disclose the reasons for the resignation,[45] rather than go through the expense and length of a hearing and possible reversal by a civil service board.[46] The executive director of Missouri's POST said there was a need for police departments to report resignations to POST, not just suspensions or terminations; departments should "not send their dirty laundry down the road to be cleaned."[47]

In one highly publicized case at the West Palm Beach Police Department, two officers had been hired despite serious problems at their previous departments. One of the officers had worked for six different police departments in Tennessee and Georgia in five years. He had worked in a police department in Chattanooga, Tennessee before joining the West Palm Beach department. The officer resigned from the Chattanooga department after two complaints of brutality were made against him and a drug problem with marijuana became known while he was serving on the undercover drug squad. He promised the police commissioner of Chattanooga that he would not apply to work in Tennessee, Alabama or Georgia but would go to South Florida. That information was not disclosed to the West Palm Beach Police Department. The other officer, while working for the Riviera Beach, Florida Police Department, arrested a suspect, beat him and blinded him in one eye. The department settled a lawsuit brought by the victim of the beating for $80,000. The Riviera Beach Department was asked by West Palm Beach, "Are you aware of any derogatory information concerning this applicant?" The Riviera Beach Department responded that it was not aware of any such information, even though the beating incident had occurred only five months earlier. The mayor of West Palm Beach later stated that neither of the officers would have been hired had the city been told about the previous misconduct.[48]

43. *Id*.

44. *Id*. Two of the officers were subsequently hired by nearby departments. *Id*.

45. See, for example, the agreement of the officer in the West Palm Beach case, which is discussed in the text accompanying *infra* note 48.

46. *See* text accompanying *infra* notes 108-109 (discussing the problems of local civil service boards overturning the termination decisions of police departments).

47. *See* Vega, *supra* note 42.

48. *Dateline NBC* (NBC television broadcast, Nov. 24, 1992) (transcript on file with authors) [hereinafter *Dateline NBC*].

Major problems with police practices, including racial profiling, brutality and use of false evidence, call into question whether police self-regulation can address these issues. When police officers overstep their authority, there is often a decline in public confidence that can diminish a department's legitimacy.[49] In November 2000, the U.S. Civil Rights Commission wrote that "police misconduct remains an 'incessant' problem in the United States, and the failure to wipe out abuse and brutality requires wholesale changes."[50] Revocation of police officer certificates can lessen the amount of police misconduct and should be adopted in those states without such a program.

II. REVOCATION PRACTICES IN THE STATES

A. History of State Involvement in Addressing Police Misconduct Issues

Concern about police professionalism was first voiced in the 1800s in England by Sir Robert Peel. In this country, the first efforts at professionalization of the police began with the formation of the International Association of Chiefs of Police, in 1893.[51]

In the 1920s, the Wickersham Commission discussed the lack of trained officers, and thirty years later, the American Bar Association drafted a "Model Police Training Act."[52] In 1967, concerned about abusive police practices in the wake of the death of Martin Luther King, the President's Commission on Law Enforcement and the Administration of Justice, recommended that every state establish a POST commission on police standards to set minimum recruiting and training standards and to provide financial and technical assistance for local police departments.[53] In 1973, the National Advisory Commission on Criminal Justices Standards and Goals made recommendations on improved recruitment, selection and training.[54] The Commission was attempting to resolve problems occurring between members of minority communities and the police.

The earliest function of POSTs was to supervise statewide minimum training standards. Over time, POSTs began to set minimum qualifications for entrance into the police academies. Graduates of the state-certified academies became the main, in some states the only, source of new police officers. Upon successful completion of the academy, the officer receives the state certificate.

49. David Kocieniewski, *New Jersey Argues that the U.S. Wrote the Book on Race Profiling*, N.Y. TIMES, Nov. 29, 2000, at A1.

50. Eric Lichtblau, *Police Abuse is a Lingering Problem,* L.A. TIMES, Nov. 4, 2000, at A26. *See also* U.S. CIVIL RIGHTS COMM'N, *infra* note 55.

51. MODEL MINIMUM STATE STANDARDS, PREAMBLE, *supra* note 38.

52. *Id.*

53. THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY ix (1967).

54. MODEL MINIMUM STATE STANDARDS, PREAMBLE, *supra* note 38.

Without a certificate, an individual cannot be employed as a police officer in the state. Following its authority in the areas of police training, qualification and certification, most POSTs were authorized to revoke the certificates of officers for defined misconduct. This is an inevitable development: if an individual is not qualified to enter the academy because he has been convicted of a misdemeanor involving moral turpitude, what possible justification can there be that once an individual who met the qualifications to enter has graduated from the academy and has been certified, and then is convicted of a misdemeanor involving moral turpitude, he may retain his certificate? As discussed below, the type of police misconduct that can lead to loss of certification varies greatly among the states. In their relatively new role, POSTs serve as licensing agencies for police personnel. The POSTs' ability to revoke the certificates of police officers allows them to deal with the problem of police misconduct.

In late 2000, the United States Civil Rights Commission Report, "Police Practices and Civil Rights in America,"[55] a follow-up to its classic 1981 report, "Who is Guarding the Guardians?"[56] stated that attempts to reduce police brutality through agencies like civilian review boards have largely failed. The Commission found that "the problem of police misconduct has affected every facet of police culture and policies."[57] Hopefully, if it issues another report in twenty years, the Commission will find that POSTs have been more effective than civilian review boards.

B. Authority for Revocation

State laws differ on the source of authority for revocation. In the early years, many states adopted revocation by POST commission regulations without legislative authorization. Attacked as beyond the scope of a commission's authority, courts upheld the regulations on the grounds that if the commission has the explicit authority to issue certificates, it has the implicit power to revoke them.[58] The West Virginia Supreme Court stated that if a board has power to license, it has inherent power to revoke for good cause, and may do so "whether or not the power to revoke is expressly or impliedly reserved in the licensing statute or in the certificate of license."[59] Over time, concerned about challenges to the authority of the POSTs to revoke without statutory directives, most legislatures expressly authorized revocation. In

55. UNITED STATES CIVIL RIGHTS COMM'N, POLICE PRACTICES AND CIVIL RIGHTS IN AMERICA, DRAFT EXECUTIVE SUMMARY (2000) [hereinafter POLICE PRACTICES].

56. UNITED STATES CIVIL RIGHTS COMM'N, WHO IS GUARDING THE GUARDIANS?; A REPORT ON POLICE PRACTICES (1981).

57. POLICE PRACTICES, *supra* note 55.

58. Cirnigliaro v. Fla. Police Standards and Training Comm'n, 409 So.2d 80, 84 (Fla. Dist. Ct. App. 1982).

59. Mounts v. Chafin, 411 S.E.2d 481, 487 (W.Va. 1991).

Tennessee[60] and West Virginia,[61] however, there is still no express statutory authority to revoke licenses for misconduct but the commission regulations nonetheless authorize revocation.

There is also a variation among the states with regard to how the legislature provides revocation power. For example, in some states, a statute sets forth the grounds for revocation,[62] while in others, the legislature establishes the revocation power in the POST and permits it by rule to establish the specific grounds for revocation.[63] Still, in other states, a combination of the foregoing approaches is used; the state statute sets forth some grounds for revocation, usually a felony conviction, and the POST is permitted to establish other grounds for revocation.[64]

C. Grounds for Revocation

Of the states with revocation authority, whether administrative or legislative, there are two major approaches: (1) those that permit revocation on narrowly defined grounds such as a felony conviction or conviction of a misdemeanor involving moral turpitude[65] and (2) those that permit revocation for conduct that has not resulted in a conviction.[66] For example, with respect to the latter, commission of conduct that would constitute a crime or, more broadly, engaging in gross misconduct indicating an inability to function as a law enforcement officer would qualify. Although on-duty misconduct is usually considered a more serious matter, POSTs may also revoke for off-duty misconduct. In the case where revocation is permitted for reasons other than a

60. The TENN. CODE ANN. § 38-8-104 (a)(4) (1997) provides: "The commission shall establish uniform standards for the employment and training of police officers, including pre-employment qualifications and requirements for officer certification."

61. The W.VA. CODE ANN. § 29-20-6 (1998) requires annual review of certification by the commission and permits revocation of a certificate if an officer fails to attend an annual in-service training program, but says nothing about revocation on grounds of misconduct.

62. Connecticut's statute sets forth the grounds for revocation without giving the Commission the power to expand or narrow the grounds. CONN. GEN. STAT. ANN. § 7-294d(c)(2) (1999).

63. South Carolina's law provides: "The Director of the Department of Public Safety is authorized to . . . provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the department." S.C. CODE ANN. § 23-6-450 (1997). South Carolina, by regulation, has adopted very broad grounds for revocation. Texas provides: "The commission may: establish minimum standards relating to competence and reliability, including education, training, physical, mental, and moral standards, for licensing as an officer, county jailer, or public security officer." TEX. OCC. CODE ANN. § 1701.151(2)(2001).

64. Colorado's statute provides: "A certification . . . shall be suspended or revoked by the POST board if the certificate holder has been convicted of a felony or has otherwise failed to meet the certification requirements established by the board." COLO. REV. STAT. § 24-31-305(2) (2000).

65. *See, e.g.*, ALA. CODE § 36-21-45 (1997 & Supp. 2000).

66. *See, e.g.*, ALASKA STAT. § 18.65.240 (Lexis 2000).

criminal conviction, the commission has to conduct administrative hearings, with variations among the states on the amount of proof necessary to revoke. In most states, the standard of proof to revoke the license of a professional is a preponderance of evidence[67] but in some states, it is clear and convincing evidence.[68]

1. Revocation for Official Misconduct Against Citizens

Some states, by statute or regulation, revoke for official misconduct directed against citizens. In these states, there is usually no requirement of a criminal conviction, rather, it must only be established in an administrative hearing that the conduct has occurred. South Dakota authorizes revocation for a misdemeanor conviction involving moral turpitude and lists as an example of moral turpitude, "[i]nterference with another's civil rights."[69] Some states set forth specific types of citizen abuse as grounds for revocation, including engaging in sexual harassment as defined by state law and using deadly force when not authorized by state law.[70] New Mexico directly addresses physical abuse of citizens while they are serving in a law enforcement capacity as opposed to off-duty misconduct by providing as a ground for suspension or revocation "committing acts of violence or brutality which indicate that the officer has abused the authority granted to him or her as a commissioned law enforcement officer."[71] North Dakota similarly provides for discipline for on-duty misconduct by authorizing revocation or suspension if the officer "[h]as used unjustified deadly force in the performance of the duties as a peace officer."[72]

The approach of other states concerning official misconduct is to use general language rather than try to specify particular kinds of abuse. For example, Utah and West Virginia provide for suspension or revocation for

67. *See, e.g.*, ARIZ. ADMIN. CODE § R2-19-119 (1995); NEB. ADMIN. R. & REG. § 010.09 (1998), *available at* http://www.nol.org/home/SOS/rules/crime/crimemenu.htm.

68. *See, e.g.*, Latham v. Fla. Comm'n on Ethics, 694 So.2d 83, 84 (Fla. App. 1997); Boswell v. Iowa Bd. of Veterinary Med., 477 N.W.2d 366, 369 (Iowa 1991) (applying preponderance for veterinarians and doctors but a higher standard for attorneys); Robinson v. Okla. Bd. of Med. Licensure and Supervision, 916 P.2d 1390, 1391 (Okla. 1996) (applying clear and convincing evidence to persons holding professional licenses); Sobel v. Bd. of Pharmacy, 882 P.2d 606, 609 (Or. App. 1994). Washington's proposed law provides that the standard of proof in actions before POST is "clear, cogent and convincing evidence." H.R. 2717, 56th Leg., Reg. Sess., § 10(1) (Wash. 2000) (on file with authors). An effort in a prior year to pass a revocation law was defeated because of disagreement about the appropriate standard of proof. Interview with Michael D. Parsons, Executive Director, Washington State Criminal Justice Training Commission, Seattle, Wash. (June 26, 2000) (notes on file with authors).

69. S.D. ADMIN. R. § 2:01:11:01 (1987).

70. MINN. R. § 6700.1600 N, O (2000).

71. N.M. ADMIN. CODE tit. 10, § 29.1.11(4) (2000).

72. N.D. CENT. CODE § 12-63-12 (1997).

"[c]onduct or pattern of conduct which would tend to disrupt, diminish or otherwise jeopardize public trust and fidelity in law enforcement."[73] By regulation, the Utah POST defines what it considers "[c]onduct or pattern of conduct."[74] Wyoming provides for revocation or suspension for "[o]ther conduct or a pattern of conduct which tends to significantly undermine public confidence in the law enforcement profession."[75] The Missouri statute concerning official misconduct authorizes revocation for "[g]ross misconduct indicating inability to function as a peace officer."[76] A proposed change to the statute would substitute the following language: "Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions and duties or indicating inability to function as a peace officer."[77]

A hybrid approach—use of general language but directed to specific types of misconduct against citizens—is used in the South Carolina regulations, which provide for revocation or suspension for "(c) The repeated use of excessive force in dealing with the public and/or prisoners; (d) Dangerous and/or unsafe practices involving firearms, weapons, and/or vehicles which indicate either a willful or wanton disregard for the safety of persons or property; (e) Physical or psychological abuses of members of the public and/or prisoners."[78]

2. Revocation on Grounds of Moral Turpitude

Many of the states that revoke for misdemeanor convictions specify that the offense must be one involving moral turpitude.[79] Other states list specific misdemeanors involving moral character that trigger revocation. The Illinois statute includes misdemeanor convictions for sexual offenses, drug offenses and offenses involving dishonesty and official corruption, among others.[80] A 1993 California Attorney General's Opinion found that only such misdemeanors could be grounds for cancellation of a peace officer's certificate.[81] The Commission had asked the Attorney General whether the Commission could cancel the certificate of an officer who had been convicted

73. UTAH CODE ANN. § 53-6-211(1)(d)(v) (1997); W.VA. CODE ST. R. § 149-2-16.1(1998).

74. UTAH ADMIN. CODE R728-409-3 J, L (1995).

75. WY RULES & REGS. Att'y Gen. PO ch. 7 § 1(f) (WESTLAW through 2000).

76. MO. REV. STAT. § 590.135(6) (1994 & Supp. 1998).

77. Missouri's Peace Officer Standards & Training Council, *available at* http://www.dps.state.mo.us/post/posthead.htm (last visited Jan. 21, 2001).

78. S.C. CODE ANN. REGS. § 38-016A (4) (2000).

79. OKLA. STAT. tit. 70, § 3311.K (1991 & Supp. 2000); IOWA ADMIN. CODE r. 501-6.2(2)(a) (1997). In 1996, Colorado repealed its moral turpitude provision. 1996 Colo. Sess. Laws § 1572-1574.

80. 50 ILL. COMP. STAT. § 705/6.1 (Supp. 2000).

81. 76 Cal. Op. Att'y Gen. 270 (1993).

of a crime for which he could have been sentenced to imprisonment in a state prison but who was given a lesser sentence, the punishment that would be given to a misdemeanant.[82] The opinion noted that the Commission had the power to "cancel any certificate" but that power had to be read in light of "legislative standards or guidelines [or] would be subject to challenge as an unconstitutional delegation of legislative power."[83] Finding legislative guidelines in the statute authorizing the Commission to adopt rules establishing standards for moral fitness in recruitment,[84] the Opinion found that not all misdemeanors committed by officers could result in revocation: the offense "must be one involving moral turpitude demonstrating unfitness to be a peace officer . . . not merely involving 'private' or other conduct which would not so demonstrate unfitness . . . sufficient to meet the legislative standards" of the law.[85] The regulation provided that a certificate shall be canceled when the officer "is adjudged guilty of a felony which has been reduced to a misdemeanor" pursuant to California law "and which constitutes either unlawful sexual behavior, assault under color of authority, dishonesty associated with official duties, theft or narcotic offense."[86]

3. Revocation for Domestic Violence Misdemeanor Convictions

What is unusual about domestic violence misdemeanor convictions is that it is the one example where federal law standards have influenced state revocation laws. In the Gun Control Act of 1968,[87] Congress prohibited firearm possession for several categories of persons, including convicted felons and illegal drug users.[88] The Act has always provided for a "public interest exception" which permits federal and state agency personnel to use firearms on the job, even those who would otherwise be disqualified under § 922(g). In 1996, Senator Lautenberg proposed the extension of the prohibition against firearms possession to "those who have been convicted of a misdemeanor crime of domestic violence."[89] That provision was enacted in 1996[90] and is not

82. The California law at issue is Section 17 of the California Penal Code, which provides:

> A felony is a crime which is punishable with death or by imprisonment in the state prison. When a crime is punishable . . . by imprisonment in the state prison . . . it is a misdemeanor for all purposes under the following circumstances: (1) After a judgment imposing a punishment other than imprisonment in the state prison . . . .

CAL. PENAL CODE § 17(a)-(b) (West 1999).

83. *See supra* note 81, at 274.

84. CAL. PENAL CODE § 13510(a) (West 2000).

85. *See supra* note 81, at 275.

86. CAL. CODE REGS. tit. 11, § 1011(b)(2) (2000). As discussed below, the Commission has never used the regulation to cancel a certificate for conviction of a misdemeanor.

87. 18 U.S.C. § 922 (1994 & Supp. IV 1998).

88. *Id.* § 922(g).

89. *Id*. § 922(g)(9).

subject to the public interest exception for law enforcement officers. It applies not only to officers who were convicted of misdemeanor domestic violence offenses after the date of the Lautenberg Amendment but also to those who were convicted prior to its passage. In a letter to all state and local law enforcement officials, the Director of the Bureau of Alcohol, Tobacco and Firearms wrote: "Employees subject to this . . . [Act] must immediately dispose of all firearms and ammunition in their possession. The continued possession of firearms and ammunition by persons under this . . . [Act is] a violation of law and may subject the possessor to criminal penalties."[91]

Challenges have been made to the Amendment on a variety of grounds, including equal protection. Police officers have argued that felonies, including domestic violence felonies, were subject to the public interest exception but not misdemeanors for domestic violence. The two circuits that have spoken on the issue have rejected the challenges.[92] In the wake of a recent Supreme Court case limiting the reach of the commerce clause,[93] attacks on a companion provision to the Amendment have been made on such grounds but have been rejected by the lower courts.[94]

The Lautenberg Amendment does not require police departments to terminate an officer who has been convicted of a domestic violence misdemeanor; departments can continue to employ the officer in a job not requiring use of a firearm without violating federal law. However, a few states have amended their revocation laws after passage of the Lautenberg Amendment and included such convictions as a reason for revocation.[95] The

90. Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, § 658, 110 Stat. 3009, 3009-371-372 (1996).

91. Dep't of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Open Letter to all State and Local Law Enforcement Officials, *available at* http://www.atf.treas.gov/firearms/domestic/opltrleo.htm (last visited Jan. 28, 2001).

92. Fraternal Order of Police v. United States, 173 F.3d 898 (D.C. Cir. 1999); Hiley v. Barrett, 153 F.3d 1276 (11th Cir. 1198), *aff'g* Nat'l Ass'n of Gov't Employees, Inc. v. Barrett, 968 F. Supp. 1564 (N.D. Ga. 1997). For a discussion of these cases and recommendations for removing the public interest exception for felony misdemeanor convictions, see Alison J. Nathan, Note, *At the Intersection of Domestic Violence and Guns: The Public Interest Exception and the Lautenberg Amendment*, 85 CORNELL L. REV. 822 (2000).

93. United States v. Morrison, 120 S. Ct. 1740 (2000).

94. United States v. Jones, 231 F.3d 508 (9th Cir. 2000); United States v. Visnich, 109 F. Supp. 2d 757 (N.D. Ohio 2000) (upholding 18 U.S.C. § 922(g)(8) (2000), which prohibits a person who is subject to a domestic violence restraining order from possessing a firearm).

95. *See, e.g.*, KAN. STAT. ANN. § 74-5616 (1992 & Supp. 1999); ALASKA ADMIN. CODE tit. 13, § 85.110(b)(1) (2000). Oklahoma provides for the suspension of a certificate in the case of a plea of guilty or *nolo contendere* to misdemeanor domestic violence. OKLA. STAT. tit. 70, § 3311.K (1991 & Supp. 1999). New Hampshire, which permits revocation for domestic violence, does not require a conviction. That provision took effect in 1994, pre-dating the Lautenberg Amendment. N.H. CODE ADMIN. R. POL. 402.02 (WESTLAW through 2001). Of course, officers who have committed acts of domestic violence can have their licenses revoked in states that do

Alaska POST acknowledged the influence of the Amendment by explaining that one of the reasons for adding conviction of a misdemeanor crime of domestic violence to the grounds for revocation was "to adopt and incorporate concerns of . . . federal law relating to misdemeanor crimes of domestic violence for police."[96] The proposed Washington law, although it does not use the phrase "domestic violence misdemeanor conviction," would effectively revoke the certificate of an officer convicted of domestic violence who was discharged by a local law enforcement agency for such an offense. The bill provides for revocation of the certificate of a person who is discharged for a crime "which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law."[97]

D. Voluntary Surrender of License

A few states—Texas by regulation[98] and Ohio by statute[99]—specifically authorize an officer to voluntarily surrender his license, usually in the form of a negotiated plea with a prosecutor to a criminal charge. In the absence of such an agreement, the license of a Texas officer who is convicted of a felony is subject to revocation; the license of an officer who is convicted of a misdemeanor is subject to suspension up to five years; the license of an officer who is given deferred adjudication—which does not constitute an adjudication of guilt—is usually suspended for the probationary period. An officer who voluntarily surrenders his license in a plea typically agrees to do so permanently. Of the 110 voluntary surrenders in Texas between January 1997 and September 2000, 104 were permanent and six were for a term of years.[100] Thus, voluntary surrenders almost always result in revocation regardless of the offense and disposition of the criminal case whereas judicial disposition of the

not have a specific domestic violence provision. For example, in an Arizona case, an officer's certificate was revoked when he struck his wife in the face during an argument on the grounds that he committed an offense involving physical violence. ARIZ. INTEGRITY BULLETIN, Vol. 1, Case No. 3, *available at* http://www.azpost.state.az/us/integrity%20bulletin/jan2000.htm (Jan. 2000).

96. Notice of amendments to its regulations was filed by the Alaska Police Standards Council on July 20, 1998. *See* 1998 REG LEXIS 11256.

97. H.R. 2717, 56th Leg., Reg. Sess., § 1(8) (Wash. 2000) (on file with authors).

98. A license holder may voluntarily surrender a license as part of a plea bargain. 37 TEX. ADMIN. CODE § 211.101(a)(2) (West 2000).

99. The Commission director has the power to revoke a certificate if the officer "[p]leads guilty to a misdemeanor . . . pursuant to a negotiated plea agreement . . . in which the person agrees to surrender the certificate." OHIO REV. CODE. ANN. § 109.77 (West Supp. 2000). Other states have developed settlement agreements between the officer and the POST in which the officer waives his rights to an administrative hearing, admits that he has violated the statute, and agrees to give up his certificate. *See, e.g.*, Mo. Settlement Agreement used by Mo. POST (on file with authors).

100. E-mail from Craig H. Campbell, *supra* note 23.

charge results in revocation only in the case of felony convictions. The reason that officers are willing to enter into such agreements is to have the charge reduced to a misdemeanor or to receive a deferred adjudication.[101] For the first nine months of 2000, there were thirty-seven permanent surrenders and ninety-nine revocations in Texas.[102]

More common than plea-bargaining by prosecutors during the criminal proceeding is the use of consent agreements between POSTs and officers who do not wish to contest revocation at the POST administrative proceeding. In some states, both a voluntary surrender as part of a plea bargain to a criminal charge as well as a consent agreement at the administrative hearing before the POST are utilized.[103] In others, prosecutors do not plea bargain for a voluntary surrender, but the POST Commission staff does so at the administrative stage.[104] There have also been instances where judges, after a plea, provide as part of the sentence that the officer surrender his law enforcement certificate.[105]

E. Revocation and Civil Service Hearings

One of the issues in drafting revocation legislation is the relationship between termination from the local agency and revocation by the POST. In some states, such as Arizona, there is no connection—an officer who is terminated from the department but then reinstated by a civil service board can still have his certificate revoked by the POST for the same misconduct.[106] In other states, the POST may not go forward with revocation if the officer's termination was overturned by a civil service board. In a proposed revocation statute for the state of Washington,[107] the Commission may revoke only when

101. Interview with Ed Porter, Assistant District Attorney, Civil Rights Division, Harris County, Houston, Tex., Dec. 7, 2000 (notes of conversation on file with authors). In the most notorious case of a voluntary surrender, Sgt. Michael Griffin, Sheriff's Dep't, Houston, voluntarily surrendered his license in exchange for dropping misdemeanor charges of assault on his girlfriend and carrying a weapon. A year later, he robbed a bank and committed a murder for which he was convicted and sentenced to death. *Id.*

102. E-mail from Craig H. Campbell, *supra* note 23.

103. E-mail from Jeremy Spratt, Investigator, Mo. POST, to Roger Goldman, Professor, Saint Louis University School of Law (Dec. 15, 2000) (on file with authors). In one case, a circuit judge ordered an officer to surrender his certificate as part of the officer's sentence. *Id.*

104. E-mail from William Flink, Certification Supervisor in charge of revocation, 1985-1990, Utah POST, to Roger Goldman, Professor, Saint Louis University School of Law (Dec. 16, 2000) (on file with authors) (recounting practices at the Utah POST).

105. Craig Jarvis, *Plea Ends NCSU Case*, NEWS AND OBSERVER (RALEIGH), Aug. 20, 1999, at B1.

106. Arizona regulations state: "No action by an agency or decision resulting from an appeal of that action shall preclude action by the [POST] Board to deny, cancel, suspend or revoke the certified status." ARIZ. ADMIN. CODE § R13-4-109.G (1995).

107. H.R. 2717, 56th Leg., Reg. Sess., § 1(9) (Wash. 2000) (on file with authors).

there is a final action, meaning that the decision of the local department to terminate has been upheld through civil service appeals or collective bargaining remedies. States considering which approach to follow will want to examine the quality of the civil service system in their state. In a series of articles in the *Boston Globe*, reporter David Armstrong recounts several instances of civil service boards overturning local departments' decisions to terminate officers.[108] Interviews with police chiefs revealed that many chiefs preferred to settle cases rather than terminate an officer and risk having the Civil Service Board reverse the termination. These chiefs believe that "the board is inherently biased because three of the five members have close ties to public safety unions representing officers in trouble."[109]

F. Whose Certificates are Subject to Revocation?

Great variation exists among the states on who is covered by revocation laws: part-time vs. full-time; elected officials, like sheriffs vs. appointed officers; law enforcement officers vs. correctional officers, etc. There is also variation on the length of time an individual may be employed prior to obtaining the certificate. The state with the widest range of officers coming under its jurisdiction is Oregon, which has the authority to revoke the certificates of public safety officers, including police officers, corrections officers, telecommunicators, emergency medical dispatchers, fire service professionals, parole and probation officers, certified reserve officers[110] and private security guards.[111] In 1999, Oregon revoked the certificates of sixty private security guards.[112]

In some states, failure to obtain a certificate, or revocation of a certificate, prevents the person from holding office as an elected county sheriff. In Oregon, a sheriff has one year to obtain the certificate after taking office.[113] In Utah, the person must have his certificate prior to taking office.[114] In states where sheriffs are constitutional officers, such as Colorado, courts have

108. David Armstrong, *Conduct Unbecoming: Second Chance for Bad Cops; Chiefs Say Civil Service Thwarts Discipline*, BOSTON GLOBE, May 21, 2000, at A1; David Armstrong, *Civil Service Panel Criticized as Unprofessional, Pro-Union*, BOSTON GLOBE, May 22, 2000, at A1.

109. David Armstrong, *Court: No Job for Man Who Hit Wife*, BOSTON GLOBE, Oct. 7, 2000, at A17.

110. OR. REV. STAT. §§ 181.610-181.712 (1994). With respect to youth correction officers, the Board establishes minimum standards and training, but it neither certifies nor revokes certification. *Id.* at § 181.640.

111. *Id.* at §§ 181.870-181.991.

112. INT'L ASS'N OF DIR. OF LAW ENFORCEMENT STANDARDS AND TRAINING: A SOURCEBOOK OF INFO 101 (William L. Flink, ed., 2000) (on file with authors).

113. OR. REV. STAT § 206.015(3) (1994).

114. UTAH CODE ANN. § 17-22-1.5 (1999).

declared unconstitutional training and certification statutes, which established qualifications beyond those set forth in the Colorado Constitution.[115]

G. Resignation vs. Termination

It is common for officers to resign their positions prior to an official termination from the local department. Chiefs are willing to tolerate this practice so that they do not have to go through the expense, and possible embarrassment, of providing a hearing. Officers are willing to leave without a hearing so that they do not have an official termination on their records.[116] Some states recognize the existence of this practice by treating a resignation the same way as a termination. For example, Iowa permits, by regulation, revocation when the officer has been discharged from employment for "good cause"[117] as well as when the officer "leaves or voluntarily quits when disciplinary action was imminent or pending which could have resulted in [his] being discharged for 'good cause.'"[118] Washington's proposed law permits revocation for certain misdemeanor convictions only when the officer is "discharged for disqualifying misconduct" from employment by a law enforcement agency.[119] The proposed Washington law also includes circumstances when resignation rather than termination can still trigger revocation—"when the totality of the circumstances support a finding that the officer resigned in anticipation of discipline, whether or not the misconduct was discovered at the time of resignation, and when such discipline, if carried forward, would more likely than not have led to discharge for disqualifying misconduct."[120]

H. The Need for Effective Revocation Laws

The mere presence of revocation authority in a state does not mean that the officers who have committed misconduct at one department will not be able to move to another; it depends on the specific provisions of the state's statute and regulations as well as the state's enforcement mechanisms. In the cases discussed in the introduction to this article,[121] each state had revocation

115. *See* Jackson v. State, 966 P.2d 1046 (Colo. 1998) (en banc).

116. For example, an officer in Raleigh, North Carolina was forced to resign after thirteen incidents for which his department disciplined him, including sexual harassment of a fellow employee. The Chief "promised not to give any prospective employers a negative recommendation if [the officer] simply dropped his administrative appeals and resigned." Craig Jarvis, *NCSU Settles Student's Suit*, RALEIGH NEWS AND OBSERVER, May 18, 2000, at A1.

117. IOWA ADMIN. CODE r. 501-6.2(2)(b) (1997).

118. *Id.* r. 501-6.2(2)(c).

119. H.R. 2717, 56th Leg., Reg. Sess., § 1(8) (Wash. 2000) (on file with authors).

120. *Id.*

121. *See supra* Part I-C for a discussion of Carney v. White, 843 F. Supp. 462 (E.D. Wis. 1994) and Doe v. Wright, 82 F.3d 265, 267 (8th Cir. 1996).

authority at the time the incidents occurred, but the officers were still able to get hired by the second department. In *Carney v. White*,[122] which involved the commission of acts of sodomy on males arrested for traffic offenses by the officer, Wisconsin revocation law did not require the POST to revoke in case of a termination. Decisions on whether to hire as well as whether to conduct a background investigation were left to local departments, unless the officer had been convicted of a felony. According to a brief filed in the case, the first chief was instructed to close the officer's personnel file to inquiries from the second department as well as to the POST.[123] In *Doe v. Wright*,[124] an officer resigned from the first department where he had offered to fix traffic tickets of three different women in exchange for sex. As required by Arkansas law, the chief filed a report with the state POST that the officer had resigned but did not, apparently, set forth the reasons for the resignation; further, he did not recommend that the officer be decertified. Under Arkansas law at the time, revocation was discretionary with the commission for such misconduct.[125] Before hiring the officer, the second police department, which was located in the same state, contacted the first department, which gave a favorable recommendation. The first department omitted the information regarding the reports of inappropriate sexual conduct even though the information was in the officer's personnel file. After obtaining employment at the second department, the officer forced women to undress and engage in sexual acts in his presence. In 1997, the Arkansas law was amended to require chiefs to file a report with the POST detailing the facts and reasons for the resignation in a case like *Wright*.[126] The new version of the law also requires the POST to review whether certification should be suspended or revoked.[127]

In an incident of police misconduct that occurred in West Palm Beach County, two officers with problems at previous departments killed Robert Jewett, a suspect. Referring to the West Palm Beach case in testimony before a congressional subcommittee, the Commissioner of the Florida Department of Law Enforcement wrote: "I am confident that had their records been known

122. 843 F. Supp. 462 (E.D. Wis. 1994).

123. *Carney*, 843 F. Supp. at 478 n.5. In fact, a POST official did put the second department on notice that the officer had a questionable background. *See supra* note 27 (discussing interview with Dennis Hanson).

124. 82 F.3d 265 (8th Cir. 1996).

125. Ark. Comm'n on Law Enforcement Standards and Training Regs. § 1010 (2)(a) (copy on file with authors).

126. ARK. CODE. ANN. § 12-9-602b(2)D (LEXIS through 1997 Reg. Sess.).

127. ARK. CODE. ANN. § 12-9-603 (LEXIS through 1997 Reg. Sess.).

when they applied for their police jobs, they would have never been hired. Had this happened, Mr. Jewett might be alive today."[128]

At the time of the Jewett killing, Florida law did require chiefs to send the Criminal Justice Standards and Training Commission (CJSTC) a report where they had cause to suspect the officer had committed decertifiable conduct.[129] However, no report was sent by the Riviera Beach, Florida department in which one of the officers had been working, and from which the officer had been dismissed after beating and blinding a suspect just five months earlier. In 1992, after the West Palm Beach case, Florida instituted a system intended to alert police agencies to problem officers.[130]

The other officer involved in the Jewett killing had come to West Palm Beach from Tennessee. In his letter of resignation, he asked the Commissioner of the Chattanooga Police Department not to mention the fact that he was forced to resign, stating that he would leave the Chattanooga area and move to South Florida.[131] Under Tennessee POST regulations, had the officer been suspended or terminated by the department for disciplinary reasons, he could have had his certificate revoked or suspended,[132] but the regulations do not cover the situation where the officer resigns.

These cases point to the need of both strengthening as well as ensuring more compliance with existing laws and regulations. Typically, the laws have criminal penalties for non-compliance but the authors are not aware of these sanctions ever being imposed. Another approach is to withhold state funds for non-compliance. For example, Florida's former law authorized cut-off of revenue-sharing funds to counties where there was non-compliance with the CJSTC statute.[133] The current trend in the states is for mandatory reporting by agency managers of terminations and resignations to the POST[134] or to the hiring departments,[135] with qualified immunity for good faith reporting.[136]

128. *Police Officers' Rights and Benefits: Hearings before the Subcommittee on Crime of the Committee in the Judiciary House of Representatives*, 104th Cong. 2, 175 (1996) (prepared statement of James T. Moore).

129. FLA. STAT. ANN. § 945.1395 (5) (West 1996).

130. *See* discussion *infra* note 227.

131. *See Dateline NBC*, *supra* note 48.

132. Rules of the Tenn. Peace Officer Standards and Training Commission, § 110-2.04(2) (on file with authors).

133. FLA. STAT. ANN. § 218.23 (West 1973); *see also* current version FLA. STAT. ANN. § 218.23 (West 1999 & Supp. 2000)).

134. *See* Puro et al., *Changing Patterns Among the States*, *supra* note 11, at 489-92.

135. ARIZ. REV. STAT. ANN. § 41-1828.01 (1999).

136. *See infra* notes 205-209.

III. THE REVOCATION EXPERIENCE OF SELECTED STATES

Both political and legal concerns play a role in the development of revocation legislation. Changes in statutes and regulations are dependent on various coalitions within each state. This section offers a brief review of the revocation experience in three states: Missouri, California and Florida. These states represent a variety of approaches to revocation.

A. Missouri—A Success Story

Missouri adopted statutory revocation in 1988.[137] Between 1980 and 1988, the Missouri POST could revoke certificates by administrative regulation only, and it revoked the certificates of only three officers.[138] The new statutory revocation authority, adopted in 1988, was strongly supported by police chiefs in the major cities—Kansas City and St. Louis.[139] Missouri has a broad revocation statute that allows for revocation of police officers' certificates for conviction of felonies and misdemeanors involving moral turpitude, for "gross misconduct indicating inability to function as a peace officer," as well as other grounds.[140]

The 1999 disciplinary proceedings of the Missouri Department of Public Safety are instructive about decisional patterns in states with broad revocation authority. The Director revoked the certificates of forty officers and placed five other officers on probation.[141] In the forty-five cases, approximately half were for felony or misdemeanor convictions; for the other half the misconduct did not result in a criminal conviction. With one exception of an individual who was placed on probationary status for five years, all other officers who were convicted of a crime had their certificates revoked. Eleven of the forty-five cases involved sexual misconduct, five without a criminal conviction and six after a conviction. These cases included sex with minors during a ride-along program and sex in exchange for helping the victim avoid criminal charges in a custody dispute.[142]

137. MO. REV. STAT. § 590.135.2 (1994 & Supp. 1998).

138. *See* Goldman & Puro, *An Alternative to Traditional Remedies*, *supra* note 11, at 64 n.105.

139. *Hearing on H.B. 150 Before the House Comm. on Governmental Organization* (Mo. 1986) (notes taken at the hearing on file with authors).

140. MO. REV. STAT § 590.135.2. (1994 & Supp. 1998).

141. *See* DPS NEWS, *supra* note 18, at 5.

142. The percentage of sexual misconduct disciplinary practices is approximately the same that was found in our study of Florida decertification from 1976 to 1983. *See* Goldman & Puro, *An Alternative to Traditional Remedies*, *supra* note 11, at 69 tbl. 4. For similar, recent examples of sexual assaults on women after traffic stops involving three different officers in Nassau and Suffolk Counties in Long Island, New York, see Tina Kelley, *Officer Accused of Sexually Assaulting a Woman While on Duty*, NY TIMES, Jan. 27, 2001, at A11.

B. California—A Battle Brewing

There is, in some states, opposition to the expansion of POSTs' power. Nowhere is this more evident than in California. In California, there is currently a heated debate on whether a certificate merely means successful completion of a course of study, or whether it means the person is licensed as a professional and must maintain certain minimum levels of performance or lose his ability to practice his profession. The battles are currently taking place both at the Commission level and in the state legislature.

By statute, California's Commission has the power to "cancel any certificate,"[143] but the Commission has done so only for the very limited reasons that are already set forth in the statute, such as felony convictions, error in issuing the certificate and fraud in obtaining the certificate. In 1991, the Commission adopted a rule that would have permitted cancellation beyond the statutory grounds if the officer is adjudged guilty of a felony "which has been reduced to a misdemeanor . . . and which constitutes either unlawful sexual behavior, assault under color of authority, dishonesty associated with official duties, theft, or narcotic offense."[144] Because of a state Attorney General's opinion,[145] the Commission believed it did not have the power to use the 1991 rule and thus has never canceled or denied a certificate pursuant to that rule.[146] The Commission is considering the adoption of a similar rule that would conform to the Attorney General's opinion by limiting cancellation to felonies reduced to misdemeanors involving moral turpitude.[147] The Commission is closely divided between commissioners who favor rules that would increase the Commission's authority and those who are representatives of police unions who "have vowed to kill them, arguing that POST is a training organization, not a licensing regulator."[148]

A parallel fight has been going on in the California Legislature. A bill was passed and sent to the Governor on August 10, 2000,[149] which would have expanded current practice by authorizing cancellation for conviction of any felony in which the amount of time given the defendant was the equivalent of a misdemeanor sentence. The bill would have prohibited the Commission from adopting grounds for cancellation beyond those listed in the statute, a power it has according to the Attorney General's opinion that authorizes cancellation, not just for criminal convictions, but for conduct that indicates the officer is

143. CAL. PENAL CODE § 13510(e) (West 2000).

144. CAL. CODE REGS. tit. 11, § 1011(b)(2) (2000).

145. 76 Cal. Op. Att'y Gen. 270 (1993).

146. *See supra* text accompanying notes 81, 83, 85.

147. *Id*.

148. Dan Walters, *Police Panel Deadlocked on Oversight*, THE FRESNO BEE, Nov. 7, 2000, at A13.

149. AB 2449, 2000 Reg. Sess. (Ca. 2000), *available at* http://www.leginfo.ca.gov/pub/99-00/bill/asm/ab_2401-2450/ab_2449_bill20000810_enrol (last visited Feb. 7, 2001).

not morally fit. The bill was withdrawn before the Governor acted, and was returned to the Senate, where the author of the bill prepared an amendment, which was not considered by the Senate committee since the session ended. The amendment would have deleted the bill's language expanding the statutory grounds for cancellation, while limiting the power of the Commission to cancel. It read: "The Legislature finds and declares that a certificate issued to a peace officer shall be deemed to be educational, in nature, rather than a license, and that the authority of POST shall be limited to withdrawal or to cancellation of a certification for violation of the law, as specifically provided by operation of law, or set forth in this chapter."[150] That bill would have forbidden the Commission to add any grounds for cancellation beyond those set forth in the statute, essentially limiting cancellation to felony convictions.[151]

C. Florida—Cutting Back on the Scope of Revocation

Florida, one of the leading states in revocation of licenses of officers, presents a prime example of the political and legal forces affecting the scope of revocation. During a twenty-year period, from 1981 to the present, the Florida CJSTC[152] has altered the severity and scope of corrective and disciplinary authority upon several occasions.[153]

Between 1967 and 1980, there was no statutory authority for revocation; there were only standards and training requirements. Nonetheless, the Police Standards and Training Commission did revoke the licenses of several officers during this time period.[154] In 1980, the legislature created the Criminal Justice Standards and Training Commission (CJSTC) which became responsible for licensing and taking disciplinary action against all criminal justice personnel, including police, correctional officers and correctional probation officers. The Commission's authority extends to officers who fail to maintain minimum qualifications or "good moral character."[155] Evidence of a lack of good moral

150. *See* author's amendment to AB 2449 (on file with authors) (referred to the Senate Public Safety Committee and held until the end of the legislative section without action).

151. *Id*.

152. From 1967 to 1981 it was known as the Police Standards Council which was to provide standardized measures for the selection and training of officers, to increase base salaries and to promote professionalization of the police service.

153. From 1980 to 1995 many states altered their revocation authority, mainly by broadening or narrowing the range of offenses or shifting from regulation to statute. These alterations make it difficult to develop longitudinal data concerning police revocation in a particular state and throughout the nation. Since 1995 there has been greater stability in state revocation practices.

154. *See* Cirnigliaro v. Fla. Police Standards and Training Comm'n, 409 So.2d 80, 85 (Fla. Dist. Ct. App. 1982) (upholding the Commission's authority to revoke even in the absence of explicit legislative authority).

155. FLA. STAT. ANN. § 943.13 (West 1996 & Supp. 2001).

character includes both a felony conviction and convictions of any misdemeanor involving a false statement or perjury.[156]

Because of the broad scope of its authority, the Commission was hearing more than 600 cases annually.[157] Both police officer and sheriff associations objected to CJSTC control over local discipline, which led the 1984 Florida Legislature to restrict the Commission's discretionary disciplinary authority. Commission discipline was restricted to "those cases in which the officers' behavior justified revocation of their certificates."[158] This alteration limited the number of cases before the Commission and redefined the scope of its probable cause hearings.

In the early 1990s, several police unions and the Florida Sheriffs Association sought to restrict Commission control over discipline of employees in police departments and sheriffs agencies.[159] On at least two major occasions these interest groups were successful in achieving amendments to the Commission's enabling statute. In 1981, the Commission had three possible disciplinary sanctions: (1) denial of initial certification, (2) suspension of the certificate and (3) revocation of the certificate.[160] Local agencies urged the Florida legislature to expand the range of disciplinary options available to the Commission, which would make it easier for police officers to retain their licenses. In 1993, the law was amended to permit the following sanctions: revocation of certificates; suspension of certificates for not more than two years; probation for not more than two years, subject to terms and conditions imposed by the Commission; remedial training and reprimands.[161] This new statute also required the Commission to establish regulatory guidelines for aggravating and mitigating circumstances; the

156. Sue Carter Collins, A Descriptive Historical Content Analysis of the Disciplinary Actions Taken by the Criminal Justice Standards and Training Commission Against Policemen in Florida Who Were Found Guilty of Sexual Harassment Between January 1, 1993 and December 31, 1997 27 (2000) (unpublished Ph.D. dissertation, Florida State University School of Criminology and Criminal Justice) (on file with authors). Initially, the grounds for disciplinary action included: "falsification or willful misrepresentation of information in an employment application, and gross insubordination, gross immorality, habitual drunkenness, willful neglect of duty, or gross misconduct which seriously reduces the certificate holder's effectiveness to function as a law enforcement officer."

157. *Id.* at 140.

158. *Id.*

159. *Id.* at 141-42.

160. *Id.* at 139.

161. FLA. STAT. ANN. § 943.1395(7) (West 1996). Under Florida law, the standard of proof for revocation of an officer's certificate is clear and convincing evidence, while the standard of proof for termination by a local agency is preponderance of the evidence. *See* Latham v. Fla. Comm'n on Ethics, 694 S.2d 83 (Fla. Dist. Ct. App. 1997). In the case of a local agency termination that does not result in revocation of the certificate, the officer may obtain employment elsewhere in the state.

sanctions imposed would be dependent on the aggravating and mitigating circumstances.[162]

In 1995, the Florida Sheriffs Association and police union representatives obtained a further legislative narrowing of CJSTC authority that limited Commission consideration to matters of serious misconduct.[163] The policy change resulted in a drastic decrease in the number of police misconduct cases brought to the Commission. It granted local agencies greater discretion than before in disciplining officers whose conduct did not directly violate the statute or rules. It has been reported that "the Commission is statutorily required to 'acknowledge and defer' when the employing agency administers disciplinary action that is within the range specified by the Commission. Commission officials and staff report that the 1995 amendment has resulted in the Commission giving greater deference to agency action and accountability in specified circumstances."[164]

The Commission responded to these statutory changes by administrative rules that specified activities comprising a "good moral character" violation. These rules were designed to limit claims of mitigating and aggravating circumstances that had restricted Commission disciplinary authority under the legislative changes in the 1990s. The new rule redefined a "good moral character" violation as: "the perpetration of an act which would constitute a felony offense," testing positive for a controlled substance, and "the perpetration of certain misdemeanors and non-criminal acts."[165] Additional officer activities that demonstrate a lack of good moral character include: false statements, misuse of official position, excessive force and having an unprofessional relationship with an inmate, detainee, probationer, parolee, or community controllee.[166]

IV. STATES WITHOUT REVOCATION POWER

> In the most severe cases, police departments should utilize decertification procedures for officers found to have committed serious abuses. . . . It also helps to curtail the practice of some "problem" officers who outrun disciplinary efforts by resigning their positions in one jurisdiction to take up work in a neighboring jurisdiction in the same state.
>
> . . . All states should revise their statutes or regulations to require that police chiefs or commissioners report the dismissal or resignation of officers

162. The aggravating and mitigating circumstances are listed in FLA. ADMIN. CODE ANN. r. 11B-27.005(6) (1999).

163. FLA. STAT. ANN. § 943.1395 (8)(c) (West 1996).

164. Collins, *supra* note 156, at 143.

165. *Id.* at 148; FLA. ADMIN. CODE ANN. r. 11B-27.0011(4) (1999).

166. FLA. ADMIN. CODE ANN. r. 11B-27.0011(4) (1999).

> accused of serious misconduct. Where decertification procedures currently exist, they should be reinvigorated and fully funded.[167]

As indicated by the trend among the states to adopt revocation authority,

it is only a matter of time after a state adopts minimum standards for training and sets minimum qualification standards for persons to enter the training academy, that it will also adopt a law or regulation authorizing revocation of that certificate for specified misconduct. Thus, it is no surprise that Washington, a state that prohibits persons who have committed crimes of moral turpitude from enrolling in the academy, is considering the adoption of legislation that would revoke the certificate of a graduate of the academy who later commits the identical misdemeanor that would have prevented the individual from attending the academy in the first place.

Rhode Island's Commission on Standards and Training[168] is authorized by statute to establish training standards relating to "minimum standards of . . . moral fitness which shall govern . . . recruitment [and] selection . . . of police officers."[169] By regulation, the Commission provides the following entry standards to its municipal police academy.

> Each candidate must successfully undergo a thorough, comprehensive background and character check by the prospective agency. Those individuals convicted of a felony and or those convicted of a crime involving moral turpitude will not be considered for entry into the Academy. Individuals convicted of a lesser crime which in the opinion of the [Commission] would effect (sic) that individual's credibility may also be refused entry into the [Academy].[170]

Under current Rhode Island law, a misdemeanor conviction involving moral turpitude would keep an individual out of the training academy—and out of law enforcement—but if the conviction occurred after certification, it is up to local departments whether or not to employ that individual.

---

167. HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES 73-74 (1998).

168. By statute, the Rhode Island Commission has no power over the Providence Police Department with respect to training. R.I. GEN. LAWS § 42-28.2-8 (1993). Similarly, under New York's training statute, cities with populations of more than one million people (*e.g.* New York City) can be exempted from provisions of the statute if the Council determines its training standards are higher than those established by the Council. N.Y. EXEC. LAW § 840(1)(h) (McKinney 1996). New York City has been exempted. A member of the NYCPD is a member of the Municipal Police Training Council pursuant to N.Y. EXEC. LAW § 839(d) (McKinney 1996).

169. R.I. GEN. LAWS § 42-28.2-8(a) (1993).

170. Facsimile from Glenford J. Shibley, R.I. Mun. Police Acad., to Roger L. Goldman, Professor, Saint Louis University School of Law, (Dec. 21, 2000) (Entry Standards to the R.I. Mun. Police Acad., on file with authors).

Indiana's Law Enforcement Training Board is required by statute to establish "[m]inimum standards of . . . moral fitness which shall govern the acceptance of any person for training by any law enforcement training school or academy."[171] By rule, the Commission requires that an applicant "shall be of good reputation and character" and that each "employing department shall conduct a character and background investigation of each applicant."[172] The Board prohibits entry into the academy if an applicant has been "convicted of a felony or any crime involving moral turpitude."[173] A dishonorable discharge from military service disqualifies the applicant and a discharge other than honorable may be grounds for rejection.[174] In August 2000, the Executive Director of the Indiana Law Enforcement Training Board announced that the Board is investigating the pros and cons of becoming a POST council, including the power to "certify and decertify police officers for violating Federal, State or Local laws and promulgated POST rules."[175]

Although logic may suggest a relationship between fitness to enter the training academy and fitness to keep the certificate once certified, without the authority to revoke a certificate, states will continue to differentiate between trainees and certified officers. Thus, the New Jersey Police Training Council upheld the dismissal of a trainee from a training academy for testing positive for illegal drugs after a mandatory drug screening, but held that it could not bar the individual for two years from law enforcement employment, concluding it lacked jurisdiction concerning the trainee's future employment.[176] Noting that the Certificate of Completion awarded to recruit officers is not subject to revocation, the former executive director of the Massachusetts Criminal Justice Training Council stated: "The Council has no role in the regulation or enforcement of police discipline other than for student officers while enrolled in an academy."[177]

Revocation states, at a minimum, typically provide that conviction of a felony is a ground for revocation.[178] In the seven states without POST revocation, whether or not a felony conviction bars serving as a law

171. IND. CODE ANN § 5-2-1-9 (a)(1) (Michie 1997 & Supp. 2000).

172. IND. ADMIN. CODE tit. 250, r.1-3-8 (WESTLAW through 2000).

173. *Id.* r.1-3-9.

174. *Id*. r.1-3-11.

175. Ind. Law Enforcement Acad., Message from the Dir. (Aug. 8, 2000), *available at* http://www.state.in.us.ilea/director/index.html.

176. Miranda v. Jersey City Police Acad., 92 N.J. Admin. 2d 9 (1992).

177. Letter from Gary F. Egan, Executive Director, Mass. Criminal Justice Training Council, to Roger L. Goldman, Professor, Saint Louis University School of Law (Aug. 29, 1986) (on file with authors).

178. This minimum applies as well to pleas of guilty or *nolo contendere*. There is some variation as to whether a suspended imposition of a sentence, or suspended execution of a sentence comes within the language of a felony conviction. It is wise to be specific in the statute or regulations whether such sentences are intended to result in revocation.

enforcement officer requires an examination of various sources of state and local law. For example, in Washington, it is up to each city to set the policy for its police officers.[179] Tacoma, Washington has a policy that a criminal record is not an absolute bar to employment.[180] Spokane, Washington's policy provides that a police record may be grounds for rejection.[181] In Seattle, Washington, convicted felons are barred from serving as police officers.[182] Washington does bar a person convicted of certain felonies and misdemeanors from carrying a firearm; however, unlike the federal law, there is no exception for law enforcement officers.[183] Rhode Island bars a felon from carrying a gun.[184] In New York, the general prohibition against felons carrying guns exempts police officers,[185] but the New York City Police Department does not hire felons.[186] In states that revoke only for felony convictions, provision must be made for cases in which the local authorities refuse to prosecute license holders. In Texas, a suit to enjoin local authorities from taking action may be brought by the state attorney general on behalf of the state agency in the county of the state capital, Travis County.[187]

In states seeking revocation authority, it is important to be able to present testimony before the legislature, which gives examples of officers who remain in a department despite repeated incidents of misconduct, as well as examples of officers who resign or who are terminated and are then rehired by another department within the state.[188] Newspaper reporters specializing in criminal justice stories need to examine not only the latest incident of police brutality, but also find out the history of the officers involved and then follow up to see

179. WASH. REV. CODE. ANN. §§ 41.12.010-41.12.183 (West 1998).

180. City of Tacoma, Job Announcements, Police Patrol Officer – Lateral Entry, Application for Employment or Promotion, *available at* http://www.cityoftacoma.org/13Jobs/emplapp2.pdf?redir=no (last visited Feb 8, 2001).

181. City of Spokane, Employment, Police Officer – Lateral Entry, *available at* http://www.spokanecity.org/employment/position.asp?positionID=16 (last visited Feb. 8, 2001).

182. Seattle Police Dep't, Employment Opportunities Sworn, A Job Like No Other In a City Like No Other, *available at* http://www.pan.ci.seattle.wa.us/seattle/spd/employ/employmenttwo.htm (last visited Feb. 8, 2001).

183. WASH. REV. CODE ANN. § 9.41.040 (West 1998).

184. R.I. GEN. LAWS § 11-47-5 (1993).

185. N.Y. PENAL LAW § 265.20 (2000 & Supp. 2001).

186. N.Y. CIV. SERV. LAW § 50(4)(d) (1999) allows the city to disqualify candidates who have been found guilty of a crime, either felony or misdemeanor. NYPD disqualifies all felons as well as persons convicted of a misdemeanor involving domestic violence. E-mail from John Eterno, Ph.D., Captain, Commanding Officer, Mapping Support Unit, NYCPD, to Roger L. Goldman, Professor, Saint Louis University School of Law (Dec. 4, 2000) (on file with authors).

187. TEX. GOV'T CODE ANN. § 2001.202 (Vernon 2000).

188. *See, e.g.*, *Hearing on H.B. 150 Before the House Comm. on Governmental Organization* (Mo. 1986) (notes taken at the hearing on file with authors).

where the officer goes next—does he stay on the force[189] or does he go to work in another department in the state or out of state? Citizen groups interested in the issue can also keep track of the employment patterns of such officers.

Opposition to revocation comes from a variety of sources. According to the *Human Rights Watch* study, "of the states we examined . . . without decertification powers, [it was] largely due to opposition from police unions."[190] In some states, the ability of local chiefs to handle the matter without the need for state assistance has been given as a reason for the lack of revocation authority. For example, in the view of the Deputy Director of Training at the Massachusetts Criminal Justice Training Council, the organizational ability of the chiefs in that state would make it "extremely difficult for an officer to go from one department to another without prior knowledge of the officer's fitness for duty."[191] In New Jersey, the director of that state's POST pointed out that the centralized structure of New Jersey's criminal justice system, including a strong attorney general and powerful county prosecutors made the need for revocation authority less important than in states where power was decentralized and officers were not likely to be disciplined.[192]

At the same time that states are becoming more involved in addressing police misconduct at the local level, the U.S. Department of Justice is currently taking broader steps to require accountability for police departments for civil rights violations under the Violent Crime Control and Law Enforcement Act.[193] By late 2000, the DOJ was investigating or had investigated fourteen police departments. These departments are located throughout the nation.[194] Eleven of the

189. For a recent example in New York, a state without revocation authority, see Michael Gormley, *State Accuses Police Force of Intimidating Citizens*, TIMES UNION (Albany, NY), Jan. 19, 2001, at B2 (reporting that several members of Wallkill, New York Police Department were accused of repeated misconduct).

190. HUMAN RIGHTS WATCH, *supra* note 167.

191. Letter from Clifford L. Keeling, Deputy Director of Training, Mass. Criminal Justice Training Council, to Roger L. Goldman, Professor, Saint Louis University School of Law (Aug. 8, 2000) (on file with authors).

192. Interview with Wayne S. Fisher, Director, N.J. Police Training Comm'n, Trenton, N.J. (May 1, 2000) (notes on file with authors).

193. The Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 104-140, 110 Stat. 1327 (codified as amended at 42 U.S.C. §§ 13701-14223 (1994)).

194. The departments under investigation include: Charleston, W. Va.; Riverside, Cal. (both Police Department and Sheriffs' Office); Orange County, Fla.; New Orleans, La., Prince George's County, Md.; East Point, Mich., Buffalo, N.Y.; New York City, N.Y., Wash., D.C.; Charleston, W. Va.; and Columbus, Ohio. Consent decrees have been reached with police departments in Pittsburgh, Pa. and Steubenville, Ohio. *See* Livingston, *supra* note 3, at 815-16; Jesse J. Holland, *Federal Rights Panel Urges Congress to Allow Lawsuits for Police Abuses*, THE PLAIN DEALER, Nov. 4, 2000, at 11A.

departments are located in states with revocation power.[195] Three departments are in Ohio and Michigan, states that recently passed revocation statutes.[196]

V. STRENGTHENING THE REVOCATION POWER IN REVOCATION STATES

In November 2000, the U.S. Department of Justice forced the Los Angeles, California Police Department to accept supervision by an independent monitor.[197] The action was based upon a four-year investigation of police misconduct and violation of citizens' civil rights in that police department. Special attention has been given to police misconduct practices in the city's poor and largely minority Ramparts section.[198] Federal oversight of this major police department is a significant new step in relationships between the national government and local police departments. This federal action challenges the operational assumption that law enforcement hiring, disciplining and firing practices should remain in the hands of local police departments.

The involvement of the federal government discussed above suggests the possibility that it might take such proactive steps under the Department of Justice's Office of Community Policing Services (COPS) Program.[199] Congress authorized $8.8 billion for grants to law enforcement agencies to add community-policing officers; the one-hundred thousandth officer was funded in May 1999.[200] It would surely be within its power to award these grants only if the local departments were operating in states with effective revocation power; the United States would have an interest that agencies which it funds are not hiring officers with a record of previous misconduct, and one way to ensure this is for the agency to be operating under a statewide revocation system.

Many, but not all, states with revocation power revoke for certain misdemeanors, typically those involving moral turpitude. As discussed above, California does not have the power but may get that authority in the future.[201] That means an officer who has been convicted of misdemeanors involving perjury, theft, embezzlement and other crimes indicating doubt about his honesty is able to serve in law enforcement so long as his department is willing to employ him. In cases where the officer is going to take the witness stand, that information will have to be disclosed as exculpatory information under

195. *See supra* note 36.

196. OHIO REV. CODE. ANN. 109.77 (West Supp. 2000); MICH. STAT. ANN. 4.450 (9b) (Lexis Supp. 2000).

197. *See* Holland, *supra* note 194.

198. "More than 100 convictions were thrown out, and 20 officers left active duty, after officers were accused of shooting, beating, and framing people in the area." *Id*.

199. 42 U.S.C. §§ 13701-14223 (1994).

200. U.S. DEP'T OF JUSTICE, OFFICE OF CMTY. ORIENTED POLICING SERV., COPS 100,000 OFFICERS FUNDED, *available at* http://www.usdoj.gov./cops_officers_funded_0110-May1999 (last visited Feb. 8, 2001).

201. *See supra* text accompanying notes 81-86.

Brady v. California[202] and will certainly cast doubt on his credibility before a jury. For that reason, many states provide that misdemeanor convictions of this type should result in revocation.

A law revoking the license of law enforcement officers convicted of felonies and some misdemeanors would ensure that such persons not serve in law enforcement. However, a revocation law should provide for revocation for reasons beyond a criminal conviction. The standard for law enforcement officers should not merely be that the person has not been convicted of a serious crime. In states with broad grounds for revocation, many officers have had their certificates revoked for reasons other than conviction of a serious crime. As discussed above, of the forty-five Missouri officers who had their certificates revoked in 1999, twenty-two were not convicted of a crime. Had those officers been certified in states that require a conviction, they would not risk loss of their certificates either for coercing a suspect into having sex in exchange for urging the dropping of criminal charges, or for beating an inmate who is in custody. Abuse of one's law enforcement position, lying, or gross incompetence may not lead to prosecution, but it should, in appropriate cases, keep individuals out of law enforcement jobs. For that reason, many states provide that not only is a criminal conviction a ground to revoke, but also the commission of such conduct, after an administrative hearing, is a ground to revoke.

Some states also provide that termination from a local department is grounds for revocation. An officer could be terminated for reasons having nothing to do with misconduct, for example, whistle blowing, political differences with his chief, etc. Termination alone, without consideration of the reasons, should not trigger revocation.

The scope of a revocation statute should include more than law enforcement officials. Corrections officers have immense power over inmates. The experience in Florida, which includes corrections officers, has been that more corrections officers are having their certificates revoked than law enforcement officers.[203] Careful study needs to be done into whether officers who are terminated from their departments and officers whose certificates have been revoked are becoming private security guards. If this is the case, states should also have the authority to decertify private security guards, especially if they have the power to carry concealed weapons and to arrest. Oregon, one of the few states that is authorized to revoke the certificates of private security

202. 380 U.S. 924 (1964).

203. In each year from 1995 to 1999 there was a greater number of revocations for corrections officers, excluding corrections probation officers. For example, in 1999, 186 correction officers' licenses were revoked in contrast to revocation for 120 law enforcement officers. FLORIDA DEP'T OF LAW ENFORCEMENT, CRIMINAL JUSTICE STANDARDS AND TRAINING COMM'N, PROBABLE CAUSE AND DISCIPLINARY PROCEEDINGS, STATISTICAL REPORT, OFFICER DISCIPLINE SECTION (1999) (on file with authors).

guards, had more revocations of private security guard certificates than any other occupation in 1999.[204]

To insure that departments report revocable conduct to POSTs, there needs to be a qualified immunity for reporting in good faith.[205] The POST should keep records of all terminations and resignations with reasons for the termination or resignation, including whether the department for which the individual worked would rehire the person.[206] The immunity should apply to reporting from local agencies to the POST[207] and from one local law enforcement agency to another.[208] It should also apply to private employers of an employee who seeks a job in law enforcement.[209]

Most states rely on local departments to report to the POST misconduct that could lead to revocation.[210] However, if the head of the department himself is implicated in misconduct, there should be alternative methods for triggering POST involvement.[211] Minnesota provides that citizens may trigger action by POST: "A person with knowledge of conduct constituting grounds for action . . . may report the violation to the board."[212]

At the time of the authors' first article on revocation in 1987, thirteen states did not have the power to revoke or suspend certificates. Since that time, six of those states have been granted the authority, four since 1996.[213] Of the seven states currently without revocation authority, it is likely that

204. *See supra* notes 110-112 and accompanying text.

205. For examples of state laws granting such immunity, see Puro et al., *Changing Patterns Among the States*, *supra* note 11, at 492-94.

206. This recommendation would apply even to those states without the power to revoke as it could reveal whether there is, in fact, a problem of officers leaving one department under questionable circumstances and going to another department within the state. Further, this information will be necessary if a national data bank is ever set up.

207. *See, e.g.*, PROPOSED LEGISLATIVE IMPROVEMENTS TO CHAPTER 590 MO. REV. STAT. § 590.180 (5) (2000) (on file with authors).

208. *See, e.g.*, VA. CODE ANN. § 15.2-1709 (Michie 1994).

209. *See, e.g.*, CAL. GOV'T CODE § 1031.1 (West 1995). The findings of the California legislature were: "Law enforcement agencies have increasingly experienced refusals from employers to divulge information pertinent to peace officer applicants even with signed release waivers from applicants themselves, and this situation has seriously affected law enforcement's ability to conduct a thorough background investigation." *See id.* (reprinting Historical and Statutory Notes).

210. For example, see FLA. STAT. ANN. § 943.1395 (5) (West 1996), which requires the local agency to investigate if it has cause to suspect the officer has committed a revocable offense and submit its findings to the CJST.

211. For an example of a chief's involvement in misconduct in the context of an out-of-control department, see Bob Herbert, *Police Predators*, NY TIMES, Jan. 25, 2001, at A27 (describing conditions in Wallkill, New York police department). New York is one of the seven states without revocation authority.

212. Minn R. 6700.1610(1) (LEXIS through 1998).

213. *See supra* note 37.

Washington will be granted such authority in 2001, and the Indiana Commission is also currently considering the adoption of revocation authority.[214]

VI. NATIONAL DATA BANK

> Federal legislation should be introduced that would link the data currently collected by state POSTs so that 'problem' or abusive officers are not allowed to obtain law enforcement employment in a neighboring state.[215]

A nationwide data bank for police officers authorized by Congress along the model of the National Practitioner Data Bank (NPDB),[216] which contains information about errant behavior by medical professionals, would allow states to share data about police officers' misconduct. The International Association of Chiefs of Police (IACP) supported a bill, the Law Enforcement and Correctional Officers Employment Registration Act of 1996,[217] which would have established in the Department of Justice a registry listing all criminal justice agencies for which an officer had worked. Additionally, it would have reported the fact that the officer had his state certification revoked. With the federal government involved in the hiring of 100,000 new law enforcement officers under the COPS program,[218] it clearly has an interest in a system which would help ensure that officers it funds, or with whom these officers work, are not persons who are unfit for the job.

The person responsible for proposing the Registration Act was the Commissioner of the Florida Department of Law Enforcement, James T. Moore, whose prepared statement at a hearing before the House Subcommittee on Crime cited the West Palm Beach case[219] as the reason such a law was needed. He stated: "The Florida police agency employing the officers had hired them without realizing that both officers had records of police misconduct with previous police employers . . . . [H]ad their records been known when they applied for their police jobs, they would have never been hired."[220] Opposition to the proposal focused on the reporting of revocation of certificates, the granting of qualified immunity for agencies and individuals who provided information under the bill, and the lack of evidence that there

214. *See supra* note 175.

215. HUMAN RIGHTS WATCH, *supra* note 167, at 74.

216. The National Practitioner Data Bank was authorized under Part B of the Healthcare Quality Improvement Act of 1986, Pub. L. No. 99-660, 100 Stat. 3784 (codified at 42 U.S.C. §§ 11101-11152 (1994)).

217. H.R. 3263, 104th Cong. (1996); S. 484, 104th Cong. (1995).

218. *See* the COPS program discussion, *supra* note 199.

219. *See* discussion of the West Palm Beach case *supra* text accompanying notes 128-132.

220. *Police Officers' Rights and Benefits: Hearings before the Subcommittee on Crime of the Committee in the Judiciary House of Representatives*, 104th Cong. 2, 175 (1996).

was a problem with unfit officers moving from state to state.[221] The bill never made it out of the committee. The bill was one of several concerning police issues, including a bill establishing a Law Enforcement Officers' Bill of Rights in the conduct of internal police investigations,[222] none of which was enacted. The passage of the NPDB for doctors was accompanied by the enactment, in the same bill, of a qualified immunity from the antitrust laws for physician staff committees in hospitals who decide whether doctors are to be given staff privileges at hospitals.[223] It may be that, for a National Data Bank for Law Enforcement Officers to be enacted, there must be a similar "carrot" for officers in terms of better due process protection in the administration of investigation and discipline in local police departments.

If the bill had passed, would it have prevented the hiring of the officers who killed Robert Jewett? That is, if the police agencies where the two officers had formerly worked were contacted, would the former chiefs have mentioned the prior misbehavior of the officers? In the case of one of the officers who had worked in Tennessee, he and the chief had agreed that no unfavorable information would be disclosed.[224] In other cases of officers leaving one department and going to another,[225] such unfavorable information was not disclosed to the second chief. The findings of the bill indicated that the misconduct at prior police departments would be listed in the data bank. That section stated, "there have been numerous documented cases of officers who have obtained officer employment and certification in a State after revocation of officer certification or dishonorable discharge in another State."[226] In the implementation section of the bill, there was no requirement that the reason for the discharge be reported. Without qualified immunity for sharing such information among police agencies,[227] chiefs will remain reluctant to come forward with information for fear of defamation suits.

221. In support of the need for the doctor's NPDB, a study was conducted by the GAO of doctors who were licensed in two states and lost their license in one state. In thirty-seven percent of the cases, the doctor kept his license in the second state. GENERAL ACCOUNTING OFFICE REPORT TO THE SEC'Y OF HEALTH AND HUMAN SERVICES, SANCTIONED PRACTITIONERS MOVE TO OTHER STATES AND TREAT MEDICARE AND MEDICAID PATIENTS 8 (1984) (on file with authors).

222. H.R. 878, 104th Cong. (1995).

223. 42 U.S.C. § 11111 (1994).

224. Violation of such agreements has been held to be a breach of contract. *See* Nadeau v. County of Ramsey, 277 N.W.2d 520 (Minn. 1979).

225. See discussion of Carney v. White, 843 F. Supp. 462 (E.D. Wis. 1994) and Doe v. Wright, 82 F.3d 265, 267 (8th Cir. 1996), *supra* text accompanying notes 24-30.

226. H.R. 3263, 104th Cong. § 2(3) (1996).

227. Arizona provides such immunity: "On request of a law enforcement agency conducting a background investigation of an applicant for the position of a peace officer, another law enforcement agency employing, previously employing or having conducted a complete or partial background investigation on the applicant shall advise the requesting agency of any known

As a practical matter, it will be difficult for states to create the database contemplated in the bill unless a state agency has information on the employment history of each officer who had been issued a certificate from a training academy. States that require only training of officers are unlikely to keep up with the employment status of the graduates of their training academies.[228] States that have revocation power are likely to have this information since the typical statute requires local agencies to report any resignation or termination to the POST.[229] Unlike the NPDB for medical professionals, which lists only those professionals who have engaged in specified misbehavior,[230] all law enforcement and correctional officers would have been listed on the proposed police registry. This prompted then U.S. Representative Charles Schumer to say: "We have a list of every officer in the country. When we're concerned only about so-called rogue officers, why not just list the few bad officers?"[231]

An alternative that would not involve federal action is data sharing among state POSTs to create a data bank of police officers whose certificates have been revoked.[232] All POSTs would benefit by participating in such a program whether or not they had revocation power. POSTs would be able to get the

misconduct in violation of the rules for retention established pursuant to § 41-1822, subsection A, paragraph 3." ARIZ. REV. STAT. ANN. § 41-1828.01(B) (West 1999). Civil liability may not be imposed for providing such information "if there exists a good faith belief that the information is accurate." *Id*. § 41-1828.01 (C). After the West Palm Beach case, the Florida Department of Law Enforcement in 1992 adopted a system which lists all criminal justice officers in the state, current and former, their employment history in law enforcement, whether they have been separated from an agency, and whether the officer's certificate has ever been revoked. The information is available to all Florida criminal justice agencies. *See* discussion of Moore's prepared statement in text accompanying *supra* note 220. Texas requires chief administrators to report to the Commission resignations and terminations, and the reasons therefore, which will be released to the chief administrator of criminal justice agencies when a written request on agency letterhead is made. *See* 37 TEX. ADMIN. CODE §§ 221.5- 7 (West 2000).

228. New York, a state without revocation power, does have a central state registry of peace officers and requires local agencies to keep the State Division of Criminal Justice Services up to date on officers who are no longer working for the agency. N.Y. COMP. CODES R. & REGS tit. 9, § 6056.5 (2000).

229. FLA. STAT. ANN. § 943.139(1) (West 1996); MO. CODE. REGS. ANN. tit.11, § 75-1.010 (1997).

230. The reasons for reporting to the NPDB for medical professionals include: loss of state licensure or other sanctions by the state medical board; loss of staff privileges for more than thirty days; and malpractice judgments or settlements. 42 U.S.C. §§ 11131-11133 (1994).

231. *Police Officers' Rights and Benefits: Hearings before the Subcommittee on Crime of the Committee in the Judiciary House of Representatives*, 104th Cong. 2, 37 (1996) (statement of Representative Charles Schumer).

232. Such a system is in place for lawyers. The National Discipline Data Bank is run by the American Bar Association and contains information concerning public discipline of lawyers by state bar associations and state and federal courts. For statistical information, see ABA STANDING COMM'N ON PROF'L DISCIPLINE DATA BANK, STATISTICAL REPORT (1992).

information immediately without having to contact local police departments. IADLEST has begun the National Decertification Database (NDD), which lists the name, date of birth and Social Security Number of officers whose certificates have been revoked for cause. Only Idaho is currently supplying information.[233] The information is disclosed only to member agencies. Other states already publish revocation information elsewhere as a matter of public record[234] and it seems inevitable that, despite opposition to disclosure of this information during the hearings on the proposed federal data bank, the information will soon be available to all POSTs.

VII. CONCLUSION

As law enforcement becomes more accepted as a profession regulated by the state, it is only a matter of time before all states will have the power to revoke the certificate or license of unfit officers, and those states that have weak revocation authority will strengthen it. It is ironic that this power already exists for virtually every other profession but not for police officers with the authority to arrest and use deadly force. The reasons why there has not been a public demand for state power to discipline police include: the tradition of local control of police, so that most people are unaware the state already is heavily involved in training and standards; the absence of public awareness of the kinds of incidents of police misconduct discussed in this article; the assumption that attempts to control police misconduct will hamper effective law enforcement; the belief that the problem of police misconduct is one that affects only minority and poor communities; the legislators' fear that if they support revocation, they will be labeled "pro-criminal"; and the opposition of police unions who fear that the state will abuse the power.[235]

In order for revocation to be adopted in those states that do not currently have it and strengthened in those states that do, the lead must be taken by local and state law enforcement professionals who can best make the point that revocation is necessary in order to enhance the professionalism of law enforcement. Legislators, regardless of party affiliation, who are concerned about ethical conduct by public officials, including the police, will be supportive of these efforts. Journalists who report on issues of police misconduct are the best resource for communicating the nature of the problem, particularly if they focus on officers who repeatedly abuse citizens. Citizen

233. Facsimile from Ray Franklin, Operations Manager, NDD, to Roger L. Goldman, Professor, Saint Louis University School of Law (Jan. 12, 2001) (on file with authors).

234. For example, Missouri publishes the name of the officer, the grounds for discipline, and the sanction imposed, whether for revocation or some lesser punishment. Currently, the NDD only lists revocations.

235. Most law enforcement officers are supportive of revocation. After all, who wants to have a partner who is obviously unfit to serve and can only get ethical officers into trouble?

groups that regularly monitor police misconduct are the best sources for identifying the problem officers in communities and states.

It is clearly unrealistic to expect local police departments and municipalities to solve the problems discussed in this article, because they are often not concerned about whether an unfit officer remains in law enforcement once that officer has left the force. There is no better example than the Webster Groves, Missouri, example discussed above.[236] This was the case in which four officers were discharged or resigned for taking part in nude hot tub parties with two girls, aged sixteen and seventeen. The city reported the firing of three officers to the Missouri POST but did not report the resignation of the fourth officer. Upon being asked why the state was not alerted to the involvement of the officer that resigned, the mayor, with remarkable candor, said: "The important issue here is that the police officers accused of doing these things are not with the Webster Groves Department."[237]

No state assumes that the public interest is adequately protected by leaving the ultimate discipline of lawyers and doctors up to law firms and hospitals. Rather, state bar associations cooperate with state supreme courts to disbar unfit lawyers and state medical boards revoke the licenses of unfit doctors. Similarly, given the costs to our society of unfit police officers, the final decision of whether or not a person remains in law enforcement cannot be left up to local departments. There is at least as great a need for state POSTs to serve a function with respect to unfit police officers similar to that of state bar associations and medical boards with respect to unfit lawyers and doctors. Unfortunately, it often takes a tragic incident that results in a public outcry to get police officer revocation legislation enacted.[238] There is no excuse for the few remaining states without revocation authority to delay any longer in getting such laws enacted.

236. *See* discussion in text accompanying *supra* notes 43-44.

237. *See supra* note 43.

238. Minnesota's revocation law was enacted in 1977, after the failure to indict several police officers involved in shooting incidents, one of which resulted in the death of the son of a well-known civil rights activists. FRANCES STOKES BERRY, INNOVATIONS, LICENSING PROFESSIONAL PEACE OFFICERS: MINNESOTA'S PEACE OFFICER STANDARDS AND TRAINING BOARD 3 (1982). Florida's revocation law was passed in 1980 after the acquittal of several white Miami police officers for allegedly beating a black motorcyclist to death after a chase for a minor traffic violation. *See* Puro & Goldman, *A Remedy for Police Misconduct*, *supra* note 11, at 121.